

# EXHIBIT 10

## PART 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE  
CIVIL ACTION NO. 02-2917 (JEI)

PATRICK BRADY, et al.,  
Plaintiffs,  
vs.  
AIR LINE PILOTS ASSOCIATION,  
INTERNATIONAL,  
Defendant.

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January 22, 2013  
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Oral sworn deposition of HENRY FARBER, ASHFELTER & ASHMORE, 32 Nassau Street, Princeton, New Jersey 08540, was taken at the law office of Archer & Greiner, 700 Alexander Park, Princeton, New Jersey, before Jean B. Delaney, Certified Shorthand Reporter and Notary Public of the State of New Jersey, on the above date, commencing at 9:43 a.m., there being present:

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<p style="text-align: right;">3</p> <p style="text-align: center;">I N D E X</p> <p>Witness Page</p> <p>HENRY FARBER</p> <p>By Mr. Toal 6</p> <p style="text-align: center;">E X H I B I T S</p> <p>Marked for I.D. Page</p> <p>Farber-1 Expert report 6</p> <p>Farber-2 Report of Rikk Salamat 13</p> <p>Farber-3 Salamat's calculation of 52</p> <p>damages based on Farber model</p> <p>Farber-4 Copy of the jury verdict 87</p> <p>Farber-5 TWA pilot seniority 104</p> <p>integration summary</p> <p>Farber-6 Document from Tuck Business 164</p> <p>School regarding TWA merger</p> <p>Farber-7 Deposition transcript of John 177</p> <p>Darrah</p> <p>Farber-8 Testimony of Jeff Brundage 182</p> <p>Farber-9 Deposition transcript of Don 187</p> <p>Carty</p> <p>Farber-10 Document regarding Flying 234</p> <p>Tigers Airlines and Seaboard</p> <p>World Airlines</p> <p>Farber-11 Letter dated July 18, 2001 244</p>	<p style="text-align: right;">5</p> <p>VIDEO SPECIALIST: Today is</p> <p>January 22nd, 2013, and we are here in Princeton,</p> <p>New Jersey, and this is the videotaped deposition of</p> <p>Henry Farber, taken by the plaintiff -- I'm sorry --</p> <p>the defendant, in the matter of Brady, et al. versus</p> <p>Air Line Pilots Association, filed in United States</p> <p>District Court, Court of New Jersey, Camden</p> <p>Vicinage, number 02-2917. My name is Jim Bateman</p> <p>from Degnan &amp; Bateman, and I'm the certified legal</p> <p>video specialist. The certified court reporter is</p> <p>Jean Delaney, also from the same firm.</p> <p>We are now going on the record and the</p> <p>time is 9:43. Would counsel please announce their</p> <p>appearances for the record.</p> <p>MR. TOAL: Dan Toal from Paul, Weiss,</p> <p>Rifkin, Wharton &amp; Garrison on behalf of defendant,</p> <p>ALPA. With me is my colleague, Julie Romm.</p> <p>MR. KATZ: I'm Daniel Katz of the</p> <p>Washington D.C. law firm, Katz &amp; Ranzman,</p> <p>representing defendant, ALPA.</p> <p>MR. PRESS: Allen Press is here for the</p> <p>plaintiffs.</p> <p>MS. RODRIGUEZ: Lisa Rodriguez, also</p> <p>for the plaintiffs.</p> <p>VIDEO SPECIALIST: Would the court</p>
<p style="text-align: right;">4</p> <p>between Ed White and Michael</p> <p>Day</p>	<p style="text-align: right;">6</p> <p>reporter please swear in the witness.</p> <p>HENRY FARBER, having been duly sworn,</p> <p>was examined and testified as follows:</p> <p>VIDEO SPECIALIST: You may proceed.</p> <p>BY MR. TOAL:</p> <p>Q Good morning, Professor Farber.</p> <p>A Good morning.</p> <p>(Farber-1 Expert report marked for</p> <p>identification.)</p> <p>BY MR. TOAL:</p> <p>Q I'm going to mark for you a copy of</p> <p>your expert report you submitted in this case.</p> <p>I'm going to mark this document as Farber</p> <p>Exhibit-1. If you could, tell me if this is, in</p> <p>fact, your expert report.</p> <p>A It appears to be my report.</p> <p>Q Okay. And is that your signature on</p> <p>the bottom of page 22 of this report?</p> <p>A Yes.</p> <p>Q This -- this report contain all the</p> <p>opinions that you intend to offer in this case?</p> <p>A Yes.</p> <p>Q Do you have any current plans to do</p> <p>more work in connection with this case?</p> <p>A No current plans unless more</p>

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<p>7</p> <p>1 information is made available that is relevant.</p> <p>2 Q And what sort of information do you</p> <p>3 contemplate might be made available that would be</p> <p>4 relevant?</p> <p>5 A Well, there could be information on --</p> <p>6 I imagine if someone showed me a relevant</p> <p>7 arbitration award that we had not seen. But I have</p> <p>8 -- I have no current plan to do any further work.</p> <p>9 Q And do you have any current plans to</p> <p>10 offer any opinions that are not reflected in this</p> <p>11 report?</p> <p>12 A No.</p> <p>13 Q Since the time you submitted this</p> <p>14 report on October 12th, 2012, have you done any</p> <p>15 additional work?</p> <p>16 A No.</p> <p>17 Q Now, are you expressing in your report</p> <p>18 any opinion on the quantity of damages that you</p> <p>19 claim the members of the class sustained?</p> <p>20 A Quantity in dollars?</p> <p>21 Q Yes.</p> <p>22 A No.</p> <p>23 Q Do you have any opinion on the -- the</p> <p>24 quantity of damages that you say members of the</p> <p>25 class sustained in terms of dollars?</p>	<p>9</p> <p>1 damages.</p> <p>2 Q And my question to you is whether you</p> <p>3 were asked not to try and quantify the damages that</p> <p>4 you say were sustained by the class.</p> <p>5 A No. No.</p> <p>6 Q Is that something you believe you would</p> <p>7 be able to do given your qualifications?</p> <p>8 A Yes.</p> <p>9 Q And how would you go about doing that?</p> <p>10 MR. PRESS: I object to the form of the</p> <p>11 question.</p> <p>12 THE WITNESS: I've not thought about</p> <p>13 that.</p> <p>14 BY MR. TOAL:</p> <p>15 Q Can you think about it now?</p> <p>16 A It might take a while.</p> <p>17 Q How long do you think it would take?</p> <p>18 A I mean, that -- frankly, it could take</p> <p>19 days. I just -- it's -- it's not a straightforward,</p> <p>20 at least for me it wouldn't be a straightforward</p> <p>21 issue. I -- I think what I did in my report is an</p> <p>22 important piece of that. Ultimately I could talk to</p> <p>23 you about the theory of how one calculates damages</p> <p>24 in a case like this. But without further work, it</p> <p>25 would be speculation.</p>
<p>8</p> <p>1 A No.</p> <p>2 Q Do you have any opinion on what the</p> <p>3 proper methodology would be for trying to quantify</p> <p>4 in dollar terms the -- the damages that you say</p> <p>5 members of the class sustained?</p> <p>6 MR. PRESS: I object to the form of the</p> <p>7 question. He has no opinion on that. If you're</p> <p>8 asking him to sit here and think about the issue and</p> <p>9 articulate the opinion, he can't do that, and I</p> <p>10 object to the form of the question.</p> <p>11 THE WITNESS: I have not formulated any</p> <p>12 opinion on that, no.</p> <p>13 BY MR. TOAL:</p> <p>14 Q Have you thought about what the proper</p> <p>15 methodology for quantifying damages would be?</p> <p>16 A I have not done any analysis, no.</p> <p>17 Q Is there any reason that in your report</p> <p>18 you don't attempt to quantify damages to the members</p> <p>19 of the class?</p> <p>20 A Yes.</p> <p>21 Q And what's that reason?</p> <p>22 A I was not asked to do that.</p> <p>23 Q Were you asked not to do that?</p> <p>24 A I was -- I was -- I -- I did what I was</p> <p>25 asked, and I was not asked to calculate dollar</p>	<p>10</p> <p>1 Q Well, based on -- as -- as you sit here</p> <p>2 today, what thoughts, if any, do you have on how you</p> <p>3 would take your report and proceed from that report</p> <p>4 to attempt to quantify damages?</p> <p>5 MR. PRESS: Let me object to the form</p> <p>6 of the question. You asked this now two or three</p> <p>7 times, and he told you that it is a complex issue</p> <p>8 and you're asking him to speculate.</p> <p>9 THE WITNESS: I -- I don't have any</p> <p>10 specific thoughts as I sit here today.</p> <p>11 BY MR. TOAL:</p> <p>12 Q Do you have any general thoughts as you</p> <p>13 sit here today?</p> <p>14 MR. PRESS: Object to the form of these</p> <p>15 questions. It's outside of what he was asked to do.</p> <p>16 MR. TOAL: Counsel, you're doing</p> <p>17 speaking objections.</p> <p>18 MS. RODRIGUEZ: No, no, no.</p> <p>19 MR. TOAL: You can just object to the</p> <p>20 form of the question.</p> <p>21 MR. PRESS: Well, I'm going to tell you</p> <p>22 what's wrong with the form so you can ask a proper</p> <p>23 question. I'm sorry, Dan, but that's the way that I</p> <p>24 object, and I object to these. You are asking him</p> <p>25 to speculate, and he's already told you that.</p>

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<p style="text-align: right;">11</p> <p>1       <b>THE WITNESS:</b> What I would tell you in</p> <p>2       general terms would not be -- would not be specific</p> <p>3       to this case at all. It would be just in general.</p> <p>4       I can talk to you about how I think about damages in</p> <p>5       a case. Do you want me to do that?</p> <p>6       <b>BY MR. TOAL:</b></p> <p>7       <b>Q</b> Do you have thoughts about how you</p> <p>8       would quantify damages in a case like this, whether</p> <p>9       general or specific?</p> <p>10      <b>A</b> The only general thought I would offer</p> <p>11      is that in -- in a case like this, the first order</p> <p>12      of business would be to ask what would have happened</p> <p>13      but for the alleged bad act, in this case, the</p> <p>14      failure of duty fair representative to say what</p> <p>15      would have the earnings of the pilots have been.</p> <p>16      And I would start by that because seniority is such</p> <p>17      an important component of their earnings in figuring</p> <p>18      out what the seniority, the merged seniority list</p> <p>19      would have looked like. From that, I would have</p> <p>20      used that as an important component of calculating</p> <p>21      damages.</p> <p>22      <b>Q</b> And do you have any thoughts about how</p> <p>23      you would determine if any given pilot had increased</p> <p>24      seniority, what they would have done with that</p> <p>25      seniority? Is there any methodology you are aware</p>	<p style="text-align: right;">13</p> <p>1       <b>MR. TOAL:</b> I would mark as Farber</p> <p>2       Exhibit-2, a copy of the report submitted by Rikk</p> <p>3       Salamat.</p> <p>4       <b>BY MR. TOAL:</b></p> <p>5       <b>Q</b> Can you tell me if you've ever seen</p> <p>6       that report before?</p> <p>7       <b>A</b> No.</p> <p>8       <b>Q</b> Were you aware that there was another</p> <p>9       expert that had been retained by plaintiffs in this</p> <p>10      case?</p> <p>11      <b>A</b> I -- I learned that last week.</p> <p>12      <b>Q</b> Had you known that at the time you were</p> <p>13      working on your report, would you have wanted to see</p> <p>14      that expert's report before submitting your own?</p> <p>15      <b>A</b> No.</p> <p>16      <b>Q</b> Are you aware of any methodology in</p> <p>17      economics that would allow you to quantify the</p> <p>18      likelihood that if circumstances had been different,</p> <p>19      that an agreement between two parties would have</p> <p>20      been reached?</p> <p>21      <b>MR. PRESS:</b> I object to that question.</p> <p>22      I'm sorry.</p> <p>23      <b>THE WITNESS:</b> Can you repeat the</p> <p>24      question, please?</p> <p>25      <b>BY MR. TOAL:</b></p>
<p style="text-align: right;">12</p> <p>1       of that would allow you -- allow you to determine</p> <p>2       that?</p> <p>3       <b>MR. PRESS:</b> I object to the form of</p> <p>4       these questions. Again, you are asking this witness</p> <p>5       to speculate about things he hasn't considered.</p> <p>6       <b>THE WITNESS:</b> I have not thought about</p> <p>7       that question.</p> <p>8       <b>BY MR. TOAL:</b></p> <p>9       <b>Q</b> Do you have any experience quantifying</p> <p>10      damages in a case like this?</p> <p>11      <b>A</b> I can't answer that. I -- I would</p> <p>12      like -- you need to define the question better. I</p> <p>13      -- do I have any -- I have experience calculating</p> <p>14      damages in cases, yes.</p> <p>15      <b>Q</b> And do you believe if you had</p> <p>16      additional time to think about the question that you</p> <p>17      would be able to develop a methodology for</p> <p>18      quantifying damages in a case like this?</p> <p>19      <b>A</b> Yes.</p> <p>20      <b>Q</b> You reviewed the report submitted in</p> <p>21      this case by Rikk Salamat?</p> <p>22      Rikk Salamat.</p> <p>23      <b>MS. RODRIGUEZ:</b> S-A-L-A-M-A-T.</p> <p>24      (Farber-2 Report of Rikk Salamat</p> <p>25      marked for identification.)</p>	<p style="text-align: right;">14</p> <p>1       <b>Q</b> Did you understand the question?</p> <p>2       <b>A</b> No.</p> <p>3       <b>Q</b> Okay. Are you aware of any methodology</p> <p>4       in the field of economics that would allow you to</p> <p>5       determine and quantify the likelihood that if</p> <p>6       circumstances had been different, that two parties</p> <p>7       who did not reach an agreement, would have reached</p> <p>8       an agreement?</p> <p>9       <b>A</b> I can't answer that question.</p> <p>10      <b>Q</b> Why not?</p> <p>11      <b>A</b> It is too vague. I -- I don't even</p> <p>12      know if circumstances had been different. That can</p> <p>13      be different in so many ways. I can't answer that</p> <p>14      question.</p> <p>15      <b>Q</b> Are you aware of any methodology in the</p> <p>16      field of economics that would allow you to quantify</p> <p>17      the probability that any two parties would reach an</p> <p>18      agreement?</p> <p>19      <b>A</b> It is still too vague. Agreement about</p> <p>20      what? Where to go to dinner? What?</p> <p>21      <b>Q</b> Are -- are you aware of any methodology</p> <p>22      that would allow you to predict the likelihood or</p> <p>23      determine the probability that an agreement would be</p> <p>24      reached in any -- any field?</p> <p>25      <b>A</b> Yes.</p>

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<p style="text-align: right;">15</p> <p>1 Q And -- and what -- what methodologies 2 are you aware of that would allow you to do that? 3 A Well, I've done some work myself on 4 strike activity. For example, in the labor -- I'm a 5 labor economist, and strike activity in the labor 6 area, you can look at -- I've done -- there is work 7 done on -- in law and economics on the likelihood of 8 a case settling or going to trial. I've done some 9 of that. There is models -- there are bargaining 10 models in economics that speak to the question of -- 11 of why there are -- why there are disputes that 12 depend on things like asymmetric information. It 13 depends on the cost to both sides of disputing 14 relative to what they would get if there was -- if a 15 dispute was settled.</p> <p>16 Q And do those methodologies allow you to 17 quantify the probability that an agreement between 18 two parties would be reached in those fields? 19 A With the right data available, 20 sometimes.</p> <p>21 Q Do you believe that you would be able 22 to quantify the probability that had there been no 23 alleged breach of the duty of fair representative by 24 ALPA in this case, that the TWA MEC and the Allied 25 Pilots Association would have been able to reach an</p>	<p style="text-align: right;">17</p> <p>1 representative? 2 A No. 3 MR. PRESS: I object to the form of the 4 question. 5 BY MR. TOAL: 6 Q And your answer was? 7 A No. 8 Q Is there any published research that 9 you are aware of that would allow you to determine 10 the likelihood that two unions would have agreed on 11 seniority integration absent alleged breach of the 12 duty of fair representation? 13 A No. 14 Q Were you made aware how the results of 15 your expert report were to be used in the context of 16 this case? 17 A Yes. 18 Q And what were you told about that? 19 A I was told they would be used in 20 calculating the damages. 21 Q And did you know who would be 22 calculating those damages? 23 A No. 24 Q Did you know how those damages would be 25 calculated based on the work that you had done --</p>
<p style="text-align: right;">16</p> <p>1 agreement on a seniority integration list? 2 MR. PRESS: I object to the form of the 3 question. 4 THE WITNESS: No. 5 BY MR. TOAL: 6 Q Are you aware of any methodology in the 7 field of labor economics that would allow you to do 8 so? 9 A Would I have unlimited time and access 10 to resources to perform such an analysis? 11 Q You -- you would have whatever time the 12 judge allowed you to -- 13 A That's a different question. 14 Q -- before you needed to submit your 15 expert report. 16 A That's a different question. If you 17 ask -- I'm not going to tell you what question to 18 ask, but -- let's just say that's a very hard 19 problem. 20 Q Do you believe that within the context 21 of this case that you would be able to quantify the 22 probability that an agreement between the TWA MEC 23 and the Allied Pilots Association with regard to 24 seniority integration would have been reached had 25 there been no alleged breach of the duty of fair</p>	<p style="text-align: right;">18</p> <p>1 the work that you had done? 2 A No. 3 Q Were you interested to know how your 4 work was going to be used in an effort to calculate 5 damages? 6 A Yes. 7 Q Did you make any inquiries about how 8 that would be done? 9 A No. 10 Q Why not? 11 A It wasn't what I was asked to do. 12 Q You agree that the manner in which 13 pilots use their seniority ranking -- withdrawn. 14 Do you agree that pilots make individual 15 choices as to how to use seniority ranking? 16 A Yes. 17 Q Have you done any work in the airline 18 industry? 19 A No. 20 Q Prior to this case, you hadn't? 21 A That's correct. 22 Q And had you done any work concerning 23 seniority integration prior to this case? 24 A No. 25 Q Did you do any -- any analysis to</p>

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<p style="text-align: right;">19</p> <p>1 determine how much variation there is in income of 2 pilots within similar seniority rankings? 3 A No. 4 Q Would it be important for you to know, 5 if you are attempting to quantify damages based on 6 an alternative seniority list, how much variation 7 there was in income among pilots with similar -- 8 similar seniority levels? 9 A I haven't thought about it. I was not 10 asked to do that. 11 Q And as you think about it now, is that 12 something that would be important for you to know? 13 A I don't know. 14 Q In your report you attempt to quantify 15 a best estimate of what an alternative seniority 16 list would have looked like in this case; correct? 17 A Yes. 18 Q And you also calculate something that 19 you refer to as upper and lower bounds for what 20 seniority lists in this case would have looked like; 21 correct? 22 A Yes. 23 Q Are you able -- are you able to say 24 what the likelihood was that in the absence of any 25 breach of the duty of fair representation, that the</p>	<p style="text-align: right;">21</p> <p>1 know -- in term -- if -- if you want a precise -- 2 when you say likelihood, if you want a probability 3 like .6 or .7 or .8, the answer then to my earlier 4 question should have been no, I can't do that. 5 Q Can you quantify the probability that 6 any alternative list that was produced in this case 7 would have been somewhere between your upper and 8 lower bounds? 9 A Without knowing what the particular 10 list was, I can't -- I couldn't know the answer to 11 that. I -- I do not -- I don't know. I haven't 12 seen any alternative lists. 13 Q But you -- you developed an upper and 14 lower bound; correct? 15 A Yes. 16 Q And you -- you come up with, in between 17 those bounds, what you view as your best estimate of 18 what an alternative list would have looked like; 19 correct? 20 A Yes. 21 Q So what I'm asking is whether you can 22 quantify the likelihood that whatever alternative 23 list would have come about in the absence of a 24 breach of the duty of fair representation by ALPA 25 would have been somewhere between the upper and</p>
<p style="text-align: right;">20</p> <p>1 list you propose as your best estimate would have 2 come about? 3 A Can you repeat the question, please? 4 (The court reporter read back the 5 pending question as follows: 6 "Question: Are you able -- are you 7 able to say what the likelihood was that in 8 the absence of any breach of the duty of fair 9 representation, that the list you propose as 10 your best estimate would have come about?") 11 <b>THE WITNESS: Yes.</b> 12 <b>BY MR. TOAL:</b> 13 Q And what is -- what is the likelihood 14 that the list you propose would have come about? 15 A Well, I have to -- when you say the 16 list I propose, something -- there is thousands of 17 names on the list. And when you say the list I 18 propose, there could be some slight differences. 19 There's also factored -- how -- I would say it is 20 quite likely that the list I proposed or something 21 quite similar would have -- would have come out. 22 Q Okay. Can you quantify the likelihood 23 that a list as -- such as the one you propose or one 24 that is substantially similar would have come about? 25 A Let me -- let me reframe my answer. I</p>	<p style="text-align: right;">22</p> <p>1 lower bounds that you set out. 2 A I can't quantify that probability. 3 Q Can you say that it is greater than 4 50 percent, that -- that any list would have been 5 between the upper and lower bounds that you propose? 6 A No. 7 Q Do you know how much Mr. Salamat 8 calculated your model would yield in damages? 9 A No. 10 Q Let me direct your attention to Farber 11 Exhibit-2, which is Mr. Salamat's report. 12 Do you have that in front of you? 13 A Yes. 14 Q I will come back to that. 15 Let me direct your attention to page 10 of 16 Mr. Salamat's report. And if I -- I could ask you 17 to take a look at figure 3, which is a -- entitled 18 linear model of probabilities. Do you see that? 19 A Yes. 20 Q Do you see in this chart that 21 Mr. Salamat is aggregating probabilities which he 22 defines as increased probabilities that an agreement 23 would have been reached? 24 A I don't understand his figure at all. 25 I don't know what it is. I would have -- I don't</p>

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<p style="text-align: right;">23</p> <p>1 know.</p> <p>2 <b>Q</b> So, well, I will represent to you that</p> <p>3 this is Mr. Salamat's effort to aggregate the</p> <p>4 increased probabilities of an agreement being</p> <p>5 reached.</p> <p>6 <b>A</b> I -- I -- I don't know what that</p> <p>7 phrase, aggregate the probabilities of -- aggregate</p> <p>8 the increased probabilities of the agreement? I</p> <p>9 just don't know what that means.</p> <p>10 <b>Q</b> Let me ask you, do you know what the</p> <p>11 proper method is to aggregate probabilities of</p> <p>12 separate events?</p> <p>13 <b>A</b> I don't -- I don't understand what the</p> <p>14 phrase aggregate probabilities means.</p> <p>15 <b>Q</b> So if Mr. Salamat was to say, for</p> <p>16 instance, that if ALPA had not insisted that the TWA</p> <p>17 pilots waive their scope of successorship</p> <p>18 provisions, that there would have been an increased</p> <p>19 probability of an agreement between the TWA MEC and</p> <p>20 the APA of five percent --</p> <p>21 <b>MR. PRESS:</b> Are you finished with your</p> <p>22 question?</p> <p>23 <b>MR. TOAL:</b> No.</p> <p>24 <b>BY MR. TOAL:</b></p> <p>25 <b>Q</b> -- and if the -- if ALPA had authorized</p>	<p style="text-align: right;">25</p> <p>1 familiar with any methodology to do that?</p> <p>2 <b>MR. PRESS:</b> I object to the form of</p> <p>3 your hypothetical.</p> <p>4 <b>THE WITNESS:</b> I know how to build</p> <p>5 probability models.</p> <p>6 <b>BY MR. TOAL:</b></p> <p>7 <b>Q</b> Do you know how to combine the</p> <p>8 probabilities of independent events? So if I say</p> <p>9 that strategy one would have increased the</p> <p>10 likelihood of an agreement being reached by five</p> <p>11 percent and strategy two would have been -- would've</p> <p>12 increased the likelihood of an agreement being</p> <p>13 reached by eight percent, and I want to know what</p> <p>14 the overall likelihood of an agreement being reached</p> <p>15 if strategies one and two were pursued, is that</p> <p>16 something you would know how to do?</p> <p>17 <b>A</b> Yes.</p> <p>18 <b>Q</b> And do you do that by adding those</p> <p>19 probabilities together?</p> <p>20 <b>A</b> I don't know what those probabilities</p> <p>21 are.</p> <p>22 <b>Q</b> The increased probability of an</p> <p>23 agreement being reached under strategy one and the</p> <p>24 increased probability of an agreement being reached</p> <p>25 under strategy two.</p>
<p style="text-align: right;">24</p> <p>1 an April 2001 legal strategy seeking to delay</p> <p>2 American Airlines' purchase of TWA assets, that</p> <p>3 would have increased the likelihood of an agreement</p> <p>4 being reached by eight percent, are you familiar</p> <p>5 with the proper methodology for determining what the</p> <p>6 overall probability of -- the overall increased</p> <p>7 probability of an agreement being reached would be?</p> <p>8 <b>MR. PRESS:</b> Let me just object to the</p> <p>9 form of the question. Very confusing. You are</p> <p>10 asking him basically to comment on a report he told</p> <p>11 you he has not read. It is horribly unfair, this</p> <p>12 whole line of questioning.</p> <p>13 <b>THE WITNESS:</b> I have no way of</p> <p>14 understanding -- I -- I don't know what he did. So</p> <p>15 I -- I couldn't tell you -- I can't tell you</p> <p>16 anything about this.</p> <p>17 <b>BY MR. TOAL:</b></p> <p>18 <b>Q</b> So I'm -- I'm not asking you to tell me</p> <p>19 about this. I'm asking you about what the</p> <p>20 methodology is for taking two events that somebody</p> <p>21 says would increase the likelihood an agreement</p> <p>22 being reached had either been pursued in isolation,</p> <p>23 how you would determine what the overall</p> <p>24 probability, the overall increased probability of an</p> <p>25 agreement being reached would have been. Are you</p>	<p style="text-align: right;">26</p> <p>1 <b>A</b> I would have to know what those -- how</p> <p>2 those increased probabilities had been calculated</p> <p>3 before I could answer that question.</p> <p>4 <b>Q</b> Is there any situation in which the</p> <p>5 proper method to try and determine the overall</p> <p>6 likelihood of an agreement being reached would be</p> <p>7 just to add those independent probabilities</p> <p>8 together?</p> <p>9 <b>MR. PRESS:</b> I object to the form of the</p> <p>10 question.</p> <p>11 <b>THE WITNESS:</b> I would have to know how</p> <p>12 -- I would have to know how the probabilities are</p> <p>13 calculated. You haven't defined for me how he</p> <p>14 calculated those probabilities. So without that</p> <p>15 answer, I can't answer the question.</p> <p>16 <b>BY MR. TOAL:</b></p> <p>17 <b>Q</b> In your analysis, do you take into</p> <p>18 account the possibility that even if there had been</p> <p>19 no breach of the duty of fair representation, that</p> <p>20 no agreement between the TWA MEC and the Allied</p> <p>21 Pilots Association would have been reached?</p> <p>22 <b>MR. PRESS:</b> Again, I got lost in the</p> <p>23 question. Can we have it read back or restated?</p> <p>24 <b>BY MR. TOAL:</b></p> <p>25 <b>Q</b> You can answer it if you understand the</p>

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<p style="text-align: right;">27</p> <p>1 question.</p> <p>2 <b>MR. PRESS: No. I object to the form.</b></p> <p>3 <b>I didn't understand it, so I assumed the witness --</b></p> <p>4 <b>MR. TOAL: Your objection is noted,</b></p> <p>5 <b>Allen.</b></p> <p>6 <b>THE WITNESS: If you could read back</b></p> <p>7 <b>the question, that would help me.</b></p> <p>8 <b>(The court reporter read back the</b></p> <p>9 <b>pending question as follows:</b></p> <p>10 <b>"Question: In your analysis, do you</b></p> <p>11 <b>take into account the possibility that even</b></p> <p>12 <b>if there had been no breach of the duty of</b></p> <p>13 <b>fair representation, that no agreement</b></p> <p>14 <b>between the TWA MEC and the Allied Pilots</b></p> <p>15 <b>Association would have been reached?"</b>)</p> <p>16 <b>MR. PRESS: I object to the form of the</b></p> <p>17 <b>question.</b></p> <p>18 <b>THE WITNESS: I would answer that yes</b></p> <p>19 <b>and no.</b></p> <p>20 <b>BY MR. TOAL:</b></p> <p>21 <b>Q</b> Okay. Can you explain what you mean by</p> <p>22 that?</p> <p>23 <b>A</b> Yes, I can. Yes -- no, I did not take</p> <p>24 specific account of that possibility. But, yes, the</p> <p>25 analysis the way I framed it was, however an</p>	<p style="text-align: right;">29</p> <p>1 or, two, they would agree to have a third party, an</p> <p>2 arbitrator decide what the merged list would be.</p> <p>3 <b>Q</b> And are you expressing any opinion as</p> <p>4 to the likelihood of either of those events</p> <p>5 occurring?</p> <p>6 <b>A</b> No.</p> <p>7 <b>Q</b> Now, do you have a view on what damages</p> <p>8 would be in this case if, even in the absence of a</p> <p>9 breach of any duty of fair representation, that</p> <p>10 there would not have been either an arbitrated</p> <p>11 seniority integration list or an agreement between</p> <p>12 the TWA MEC and the Allied Pilots Association</p> <p>13 regarding a merged seniority integration list?</p> <p>14 <b>MR. PRESS: I -- I object to the form</b></p> <p>15 <b>of the question. I do not understand what you are</b></p> <p>16 <b>asking.</b></p> <p>17 <b>THE WITNESS: As I said before, I</b></p> <p>18 <b>assumed there would be a merged seniority list.</b></p> <p>19 <b>That's what I assumed.</b></p> <p>20 <b>BY MR. TOAL:</b></p> <p>21 <b>Q</b> And in the event that no merged</p> <p>22 seniority list would have come about through either</p> <p>23 arbitration or agreement, how would that affect any</p> <p>24 damage analysis?</p> <p>25 <b>A</b> For the airlines to merge, there has to</p>
<p style="text-align: right;">28</p> <p>1 agreement was reached, absent failure -- absent</p> <p>2 failing to perform the duty of fair representation,</p> <p>3 whether it was through a negotiated settlement, or</p> <p>4 some arbitration, or some other way, my estimate is</p> <p>5 an estimate of what would have happened.</p> <p>6 <b>Q</b> So in your analysis, are you assuming</p> <p>7 that had there been no breach of a duty of fair</p> <p>8 representation, that either an agreement would have</p> <p>9 been reached or there would have been an arbitrated</p> <p>10 result?</p> <p>11 <b>MR. PRESS: I -- I -- I object. I</b></p> <p>12 <b>simply do not understand your question at all. I</b></p> <p>13 <b>object to the form of it.</b></p> <p>14 <b>THE WITNESS: I expect that a merged</b></p> <p>15 <b>seniority list would have resulted. There would</b></p> <p>16 <b>have been a merged seniority list. I take no stand</b></p> <p>17 <b>on how it would have come about, but there would</b></p> <p>18 <b>have been a merged seniority list.</b></p> <p>19 <b>BY MR. TOAL:</b></p> <p>20 <b>Q</b> And what are the -- what -- what are</p> <p>21 the alternatives for how such a list might have come</p> <p>22 into being?</p> <p>23 <b>A</b> Well, the -- the two alternatives</p> <p>24 that -- of which I'm aware, which may not be the</p> <p>25 only, are, one, is they would negotiate an agreement</p>	<p style="text-align: right;">30</p> <p>1 be a merged seniority list. So I -- I don't</p> <p>2 speculate about a world where there wasn't a merged</p> <p>3 seniority list. So if there is a merged seniority</p> <p>4 list, here's what it would look like.</p> <p>5 <b>Q</b> But do you have an understanding in</p> <p>6 this case about whether the Allied Pilots</p> <p>7 Association had the ability unilaterally to decide</p> <p>8 on a merged seniority integration list?</p> <p>9 <b>A</b> Excuse me? Please repeat the question.</p> <p>10 <b>Q</b> Do you have an understanding in this</p> <p>11 case about whether -- do you know what the APA is,</p> <p>12 if I refer to --</p> <p>13 <b>A</b> Yes.</p> <p>14 <b>Q</b> And what do you understand the APA to</p> <p>15 be?</p> <p>16 <b>A</b> It's -- it is the union representing</p> <p>17 the airline-- the American Airlines pilots prior to</p> <p>18 the merger.</p> <p>19 <b>Q</b> And do you have an understanding in</p> <p>20 this case as to whether the APA had the ability to</p> <p>21 determine unilaterally what a merged seniority</p> <p>22 integration list would look like?</p> <p>23 <b>A</b> No.</p> <p>24 <b>Q</b> You don't have any understanding one</p> <p>25 way or the other?</p>

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<p style="text-align: right;">31</p> <p>1       A    I have an understanding that there was 2 language in their contract which gave them the -- 3 which -- which gave them that right in the contract, 4 but how that would have played out in a -- in a -- 5 in a negotiation with TWA, with the ALPA, I have no 6 way of knowing. 7       Q    Do you have any understanding as to 8 whether the APA believed it had the right to 9 unilaterally determine what a merged seniority list 10 would likely look like in this transaction? 11       A    I have no idea what the APA believed. 12       Q    Do you have any understanding as to the 13 APA's views on its willingness to arbitrate 14 seniority integration in this transaction? 15       A    No. 16       Q    Would that be relevant to your 17 analysis? 18       A    No. 19       Q    Why not? 20       A    Because it's very hard to speculate on 21 exactly the form that the negotiations would take 22 had ALPA not failed in its duty of fair 23 representation. They -- presumably there would have 24 been a negotiation between ALPA and APA, and I 25 really can't speculate as to exactly how that would</p>	<p style="text-align: right;">33</p> <p>1       A    That's correct. But what I'm saying 2 is, simply again, is that a merged seniority list 3 would have come out of that process one way or the 4 other. 5       Q    Although, as you testified previously, 6 your understanding is that the APA had the ability 7 unilaterally under its contract to determine what 8 the seniority integration list would be in the 9 absence of an agreement; correct? 10       A    I don't full -- I'm not a lawyer and I 11 don't understand the full ramifications of the 12 clause in -- in the APA contract. But I do 13 understand there was some language in there 14 suggesting that they didn't need to arbitrate. But, 15 again, a member on the opposite side, ALPA and the 16 TWA and their contract, had an arbitration clause. 17 How that those -- some -- have to be some middle 18 ground or some give in a negotiation because they 19 would reach agreement. When I say that I can't -- I 20 can't tell you what the probability they would -- 21 they would arbitrate is or what the probability they 22 would reach a negotiated settlement is. What I'm 23 suggesting is they'd do -- they would do one or the 24 other. 25       Q    Do you have an understanding that as a</p>
<p style="text-align: right;">32</p> <p>1 have come out. 2       Q    Well, what do you mean you can't 3 speculate as to how any negotiation between the TWA 4 MEC and ALPA -- 5       A    Let me be more specific. I don't know 6 whether they would have reached an agreement 7 voluntarily because, after all, TWA had, in their 8 contract with ALPA, an arbitration clause. They -- 9 they may well have wound up in arbitration. APA may 10 have said, okay, we can't agree. We need to do this 11 merger. We'll have an arbitration. There might 12 have been an arbitration. There might have been a 13 negotiated settlement. I just don't know what shape 14 that negotiation would have taken. 15       Q    So let me make sure I understand your 16 testimony. You are not expressing any opinion on 17 the likelihood that the APA would have agreed to 18 arbitrate seniority integration; is that correct? 19       A    Correct. 20       Q    And you are not expressing any opinion 21 on the likelihood that in any negotiation between 22 the APA and the TWA MEC, even in the absence of an 23 alleged breach of the duty of fair representation by 24 ALPA, that an agreement actually would have been 25 reached; correct?</p>	<p style="text-align: right;">34</p> <p>1 condition of American Airlines acquiring TWA's 2 assets, that it required TWA's pilots to waive the 3 arbitration provision with respect to seniority 4 integration in its collective bargaining agreement? 5       A    I saw some statements to that effect, 6 yes. 7       Q    And do you have an understanding that 8 the TWA pilots did, in fact, waive the provision in 9 their collective bargaining agreement that provided 10 for arbitration of seniority integration disputes? 11       MR. PRESS: I'm just going to object to 12 the form of the question. 13       THE WITNESS: Yes. 14       MR. PRESS: TWA pilots didn't waive 15 anything, but subject to that, you can go ahead and 16 answer. 17       BY MR. TOAL: 18       Q    Your answer is yes? 19       A    As -- as I understand it, the ALPA, on 20 behalf of the TWA pilots did that, yes. 21       Q    And so your expert report is assuming 22 that a merged seniority list would have come about 23 either through an arbitration between the TWA MEC 24 and the APA or a negotiation between the TWA MEC and 25 the APA; correct?</p>

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<p>35</p> <p>1 A My report assumes that -- that there 2 would have been a merged seniority list. I agree 3 that the two ways I can think of sitting here to 4 reach such a merged list are a negotiated agreement 5 or an arbitration, but I am not making any 6 assumption one way or the other on that. I'm simply 7 assuming there would have been a merger of the 8 seniority lists. 9 Q Well, didn't you agree that a merged 10 seniority list could also come about through a 11 unilateral decision by the APA? 12 A I don't -- I don't -- I have no view of 13 that. I don't -- I don't -- my view -- my view is 14 to -- this would start out as a negotiation between 15 the APA and ALPA. 16 Q And as between a list that is 17 unilaterally decided by the APA, a list that is 18 negotiated, or a list that is determined by 19 arbitration, are you expressing any view as to the 20 likelihood of any of those three possibilities? 21 A My understanding of the negotiation 22 process is -- is that had ALPA performed its duty of 23 fair representation, there would have been -- the 24 process would have started with a negotiation 25 between APA and ALPA.</p>	<p>37</p> <p>1 industry in the -- quite a number of cases we looked 2 at where there had been a unilateral imposition. 3 Q Do you know what Supplement CC is? 4 A Yes. 5 Q And what is that? 6 A Supplement CC, as I understand it, is 7 an addendum to the -- to some agreement which 8 specifies how the seniority lists will be merged in 9 the American/TWA case. 10 Q And how is that determined? 11 A I don't know precisely. I -- I don't 12 know. 13 Q Do you have an understanding that 14 Supplement CC was determined unilaterally by the 15 APA? 16 MR. PRESS: I object to the form of the 17 question. 18 THE WITNESS: I -- I don't know. 19 BY MR. TOAL: 20 Q Let me direct your attention to Farber 21 Exhibit-2, which is Mr. Salamat's report. 22 A Okay. 23 Q And if you could take a look at page 21 24 of this report. 25 Do you see here, Mr. Salamat, figure eight,</p>
<p>36</p> <p>1 Q Whether that's true or not, are you 2 expressing any view as to the likelihood of a 3 negotiated result, an arbitrated result, or a 4 unilaterally determined seniority list by the APA? 5 A By definition, once they start 6 negotiating, if they reach an agreement, it is a 7 negotiated agreement. 8 Q And if they negotiate and it is 9 unsuccessful, then they've got to come up with some 10 other way to determine what the seniority list is 11 going to be. So my question to you is, is whether 12 you are expressing an opinion on the likelihood of 13 any of those three possibilities for how a merged 14 seniority list could come about. 15 A I'm suggesting that unilateral 16 imposition is not an option I'm considering. 17 Q And why is that? 18 A Because there is a negotiation that 19 would take place. Even -- even an arbitrated 20 solution takes place after negotiation. 21 Q Are you aware of any reason why in this 22 case there could not have been a unilateral decision 23 by the APA with regard to the seniority integration 24 list? 25 A I have not seen any evidence in the</p>	<p>38</p> <p>1 has a list of post deregulation mergers? 2 A Okay. 3 Q And do you see in the last column under 4 arbitrator, he either lists an arbitrator, lists an 5 agreement or lists unilateral? 6 A Yes. 7 Q So as to the mergers that he designates 8 as unilateral, do you have any reason to dispute 9 that the seniority integration list in those cases 10 were determined unilaterally? 11 A I have no idea how this was come up 12 with. I just don't know. I have no opinion. 13 Q Okay. If you -- if you knew as a 14 matter of fact that the APA had the ability 15 unilaterally to determine what the merged seniority 16 integration list would look like, would that affect 17 your analysis in any way? 18 A No. 19 Q Why not? 20 A Because in a -- I don't think you start 21 a negotiation with the assumption that the person 22 you are negotiating with has unilateral authority. 23 In no sense is that a negotiation. So I start from 24 the view that they will -- had ALPA performed its 25 duty of fair representation, there would have been a</p>

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<p style="text-align: right;">39</p> <p>1 negotiation. APA may come into that negotiation  2 with the view that their contract gives them a  3 unilateral right. That doesn't necessarily give  4 them the unilateral right. I would have done  5 exactly the same. In fact, my analysis is  6 predicated -- my analysis is not predicated on, but  7 my analysis understands that APA does have this  8 clause in their contract just like TWA had a clause  9 in their contract; TWA pilots had a clause in their  10 contract. And how that would play out in  11 negotiation where both parties are ably -- ably  12 represented is something that, you know, it is hard  13 to speculate on. And the best you could do is the  14 analysis I did.</p> <p>15 Q But you have an understanding that the  16 provision in the TWA collective bargaining agreement  17 with regard to arbitration of seniority integration  18 disputes was waived; correct?</p> <p>19 A Yes.</p> <p>20 Q And I'm asking you to assume just as a  21 matter of fact that the APA had the unilateral  22 ability to determine what a seniority integration  23 list would look like. With that assumption, would  24 that affect your analysis in any way?</p> <p>25 MR. PRESS: I object to the form. He's</p>	<p style="text-align: right;">41</p> <p>1 sure.</p> <p>2 Q And in what way would it have been  3 different?</p> <p>4 A I -- I don't know.</p> <p>5 Q Well, in that event, would you have had  6 to have taken into account the possibility that no  7 negotiated agreement between the TWA MEC and the APA  8 would have been reached?</p> <p>9 MR. PRESS: No, wait. Let's be clear  10 on what event you are describing because he just  11 described an event where God came down and powered  12 the union. If that's part of your hypothetical,  13 that's an okay question. If not, I object to the  14 form of it.</p> <p>15 THE WITNESS: Once God gives APA the  16 power, there is no negotiation.</p> <p>17 BY MR. TOAL:</p> <p>18 Q So let's say, instead of God coming  19 down, American Airlines had said, we will do this  20 transaction if, and only if, the arbitration  21 provision as to seniority integration is waived by  22 or on behalf of TWA pilots. In that event, would it  23 be necessary for you to take into account the  24 possibility that no negotiated result would have  25 been reached?</p>
<p style="text-align: right;">40</p> <p>1 already answered the question, and I object to your  2 incomplete hypothetical.</p> <p>3 THE WITNESS: You -- you prefaced your  4 hypothetical with the statement that TWA had waived  5 the right to arbitration. And my -- I'm going to  6 proceed from the view that that was due to ALPA's  7 failure to represent -- that waiver by ALPA was a  8 big part of their failure to represent adequately  9 the TWA pilots. Therefore, I -- I can't -- I don't  10 know what to do with -- with the view that the APA  11 thought it had unilateral authority. If you want to  12 tell me as -- is your -- let me ask you a question.  13 Is your hypothetical that, forget the bargaining,  14 forget everything. God came down and gave the APA  15 the unilateral right to choose what the seniority  16 list would be? Is that --</p> <p>17 BY MR. TOAL:</p> <p>18 Q Yes. Would that affect your analysis  19 in any way?</p> <p>20 A Yes. Because if I were asked to say  21 what would have happened had the APA -- had the --  22 had ALPA performed its duty of fair representation,  23 I would have said even ALPA's not more powerful than  24 God, and God came down and gave the APA the  25 unilateral right, and it would have been different,</p>	<p style="text-align: right;">42</p> <p>1 A My analysis does take into account the  2 fact that no negotiated result would have been  3 reached.</p> <p>4 Q But the only alternative you consider  5 is that an arbitrated result would be reached;  6 correct?</p> <p>7 A That's the only one I -- I can  8 enumerate here, but I take no stand on exactly how  9 the merged seniority list would have been  10 considered -- what the process that led to the  11 merged seniority list being constructed would have  12 been. I simply say there would have been a merged  13 seniority list.</p> <p>14 Q Right, but you don't take into account  15 in your analysis the possibility that the APA could  16 unilaterally determine what the merged seniority  17 list would look like; correct?</p> <p>18 A I don't accept that as a premise,  19 that's correct.</p> <p>20 Q And if you did accept that as a  21 premise, how would your analysis change, if at all?</p> <p>22 MR. PRESS: Well, how -- how would he  23 know that? I object to the form.</p> <p>24 THE WITNESS: Your -- your hypothetical  25 now is the APA can impose whatever list they want.</p>

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<p style="text-align: right;">43</p> <p>1 <b>BY MR. TOAL:</b></p> <p>2 <b>Q</b> My hypothetical is there are at least</p> <p>3 three options available for -- for determining what</p> <p>4 a merged seniority integration list would look like.</p> <p>5 One is the parties could agree to arbitrate the</p> <p>6 dispute. Two is that the parties could negotiate</p> <p>7 and try and reach an agreement consensually. And</p> <p>8 three is that the APA had the ability to determine</p> <p>9 what the merged list would look like. So if all</p> <p>10 three options were available, would that affect your</p> <p>11 analysis?</p> <p>12 <b>MR. PRESS:</b> I'm just going to object.</p> <p>13 You are asking incomplete hypotheticals over and</p> <p>14 over again. This one is seriously flawed. But</p> <p>15 subject to that, you can answer.</p> <p>16 <b>THE WITNESS:</b> I -- I honestly don't</p> <p>17 know how to answer that question. The -- I can't</p> <p>18 just assume that the APA -- here is the problem.</p> <p>19 Negotiation and arbitrations are part of a process.</p> <p>20 It is not as if, well, you do this or you do this,</p> <p>21 or there is a unilateral. A unilateral imposition</p> <p>22 is simply -- is that, again, you are back to the God</p> <p>23 scenario. So either we have the God scenario or we</p> <p>24 don't. I've told you that if we have the God</p> <p>25 scenario where God can -- gives the APA power to</p>	<p style="text-align: right;">45</p> <p>1 to -- object to the form of the question. It is</p> <p>2 only so good.</p> <p>3 <b>MR. TOAL:</b> All right. We are going to</p> <p>4 speak to the judge later today, so --</p> <p>5 <b>THE WITNESS:</b> Can you repeat the</p> <p>6 question, please?</p> <p>7 (The court reporter read back the</p> <p>8 pending question as follows:</p> <p>9 "Question: So when you say if the APA</p> <p>10 had the ability to determine what the merged</p> <p>11 seniority list would look like unilaterally,</p> <p>12 what's there to do, do you mean that there</p> <p>13 would be no damage in that case?")</p> <p>14 <b>MR. PRESS:</b> I object to the form of the</p> <p>15 question in that it mischaracterizes the witness's</p> <p>16 prior testimony.</p> <p>17 <b>THE WITNESS:</b> Here is -- what I mean to</p> <p>18 say is, if you assume a hypothetical where no matter</p> <p>19 what ALPA did, the APA would have the right to</p> <p>20 unilaterally impose what they wanted, then, indeed,</p> <p>21 in that case, there would not be damages. If --</p> <p>22 <b>BY MR. TOAL:</b></p> <p>23 <b>Q</b> And if instead of God coming down and</p> <p>24 giving this power to the APA, it was a power derived</p> <p>25 from the American Airline asset purchase agreement</p>
<p style="text-align: right;">44</p> <p>1 impose what they want, yes, that would affect my</p> <p>2 analysis.</p> <p>3 If they -- if I was approached to say you have</p> <p>4 to accept that the APA can impose what they want,</p> <p>5 and it has nothing to do with ALPA's failure to</p> <p>6 fairly represent the TWA pilots, I would say, how --</p> <p>7 what's there to do? We understand that.</p> <p>8 What I'm saying is, we live in a world where</p> <p>9 had ALPA not failed in its duty of fair</p> <p>10 representation, you have a bargaining process. At</p> <p>11 the end of the day, the bargaining process might</p> <p>12 have arbitration. Okay? And, you know, I -- I</p> <p>13 proceed from there.</p> <p>14 <b>BY MR. TOAL:</b></p> <p>15 <b>Q</b> So when you say if the APA had the</p> <p>16 ability to determine what the merged seniority list</p> <p>17 would look like unilaterally, what's there to do, do</p> <p>18 you mean that there would be no damage in that case?</p> <p>19 <b>MR. PRESS:</b> Well, I object to the form</p> <p>20 of the question. He told you that they did not have</p> <p>21 that power.</p> <p>22 <b>MR. TOAL:</b> Allen, would you stop with</p> <p>23 the speaking objections and trying to coach your</p> <p>24 witness?</p> <p>25 <b>MR. PRESS:</b> No, I'm not. I'm trying</p>	<p style="text-align: right;">46</p> <p>1 and the law, would your answer be the same?</p> <p>2 <b>MR. PRESS:</b> I object to the form of the</p> <p>3 question. It mischaracterizes the evidence in the</p> <p>4 prior trial.</p> <p>5 <b>THE WITNESS:</b> No.</p> <p>6 <b>BY MR. TOAL:</b></p> <p>7 <b>Q</b> Why not?</p> <p>8 <b>A</b> Because no one, in fact, we've not</p> <p>9 lived in the world where TWA's pilots -- the ALPA --</p> <p>10 ALPA did not waive the right to arbitration. We</p> <p>11 don't know what American, in fact, would have done.</p> <p>12 We don't know whether TWA would have continued and</p> <p>13 -- and continued to fly, and had other suitors,</p> <p>14 other ways to get resources and so on. So it's --</p> <p>15 the hypothetical that simply says that what if we --</p> <p>16 now you are closer to describing the world we live</p> <p>17 in, which is American made statements that said if</p> <p>18 you want to continue with this, you got to get your</p> <p>19 pilots to waive their right to arbitration. But had</p> <p>20 they not waived the right to arbitration, I'm -- I'm</p> <p>21 assuming that TWA would continue to fly.</p> <p>22 <b>Q</b> You -- you are making that assumption?</p> <p>23 <b>A</b> Yes. I'm -- I'm -- I'm assuming that</p> <p>24 that's not like God giving the APA power.</p> <p>25 <b>Q</b> So in your mind there is a difference</p>

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<p style="text-align: right;">47</p> <p>1 between whether God gave the APA that power or 2 whether by -- by virtue of law it had that power; 3 correct? 4 A By virtue of -- I'm not sure what law 5 we are talking about. 6 Q Well, let me ask you to assume that as 7 a matter of law that the APA had the power to decide 8 on the merged seniority integration list 9 unilaterally. Is that different in your mind from a 10 situation where God gave the APA that power? 11 A You are the lawyer. I mean, is God 12 law? I -- I -- it's -- you know, if you want to 13 tell me that something with the status of a legal -- 14 you know, if the law -- if the law says that it's 15 like God coming down and saying the APA has the 16 power, then APA has the power. You know -- you 17 know, the question is, is this independent of any 18 behavior of ALPA. 19 Q And you don't have any reason to -- to 20 dispute that any of the mergers on figure eight that 21 indicate they were decided unilaterally were, in 22 fact, decided unilaterally; do you? 23 A I have no information. 24 Q Okay. And you see here that the first 25 transaction that Mr. Salamat lists as being decided</p>	<p style="text-align: right;">49</p> <p>1 A No. 2 Q Do you have any understanding of the 3 APA's views regarding arbitration of seniority 4 integration? 5 MR. PRESS: Objection. It's been asked 6 and answered. 7 THE WITNESS: Can you repeat the 8 question, please? 9 BY MR. TOAL: 10 Q Do you have any understanding of the 11 APA's views regarding seniority integration? 12 A Well, I understand that they -- their 13 contract with American said they didn't have to do 14 that. That's all I know. 15 Q And did you -- do you have an 16 understanding that the APA and its representatives 17 said that under no circumstances would it agree to 18 arbitration of seniority integration? 19 A No. 20 Q Would that make a difference to your 21 analysis if you knew that the APA was unwilling to 22 engage in arbitration? 23 A Are you asking whether I knew they were 24 unwilling or I knew they made statements saying they 25 were unwilling?</p>
<p style="text-align: right;">48</p> <p>1 unilaterally was between American and TWA; correct? 2 A I see that on the list, yes. 3 Q And do you have any reason to dispute 4 that? 5 A To be honest, I don't -- I -- I -- I 6 don't -- you know, this is about Supplement CC, I 7 suppose, and I don't know enough about how 8 Supplement CC was derived. For all I know, it was 9 unilateral, or it might be that there was 10 negotiation between ALPA and APA where ALPA, you 11 know, kind of stripped TWA of their bargaining power 12 by giving up the right -- having them give up the 13 right to arbitration. And, you know, I just don't 14 know if it is unilateral or just with very unequal 15 bargaining power. I just don't know. 16 Q And you mentioned before the 17 possibility that even if American Airlines made 18 waiver of the arbitration provision for seniority 19 integration a condition of the transaction, that it 20 might not follow through on that; correct? 21 A I don't know. 22 Q And do you have any evidence that you 23 can point to today to suggest that if American made 24 that a condition, that it wasn't intent on enforcing 25 that condition?</p>	<p style="text-align: right;">50</p> <p>1 Q My -- my premise is if you knew that 2 the APA was unwilling to arbitrate seniority 3 integration, would that make a difference in your 4 analysis? 5 A No. 6 Q Why not? 7 A Because what people say they are 8 unwilling to do and what they might be unwilling to 9 do at a point in time when negotiations proceed and 10 they need to reach an agreement or they need to get 11 a seniority list integrated, they might do it. 12 Q So -- but my question is different. 13 I'm -- I'm not asking you to assume that they said 14 it. I'm asking you to assume that they meant it, 15 and that they were not willing to agree to 16 arbitration of seniority integration. Would that 17 affect your analysis? 18 MR. PRESS: Let me just object to the 19 form of the question. It is an incomplete 20 hypothetical and an unfair question. Subject to 21 that, you can answer. 22 THE WITNESS: If -- your hypo -- I 23 don't know how to understand your hypothetical, 24 because what people are willing to do and not 25 willing to do is a function of the circumstance they</p>

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<p style="text-align: right;">51</p> <p>1 find themselves in. And what -- what's true is  2 in -- in the -- in the world -- in a world where  3 ALPA did not shirk its duty of fair representation,  4 APA would have found themselves in a very different  5 position than the position they wound up in once  6 ALPA convinced TWA to drop the merger -- I'm  7 sorry -- their arbitration clause.  8 Therefore, I don't think it is -- it is not a  9 sensible hypothetical for me to say what if they  10 were unwilling to, intransigent, they have to reach  11 an agreement somehow. You are sitting there with  12 one side with an arbitration clause, the other side  13 with a no arbitration clause, and they are  14 negotiating. I don't know what's going to give  15 there. APA may be willing to give up more in their  16 negotiations in order to avoid having to go to  17 arbitration because they don't want to go to  18 arbitration, so they give up more in negotiation.  19 So I -- basically, the idea simply is to  20 say -- you know, my plan of analysis is very  21 straightforward, very straightforward, and doesn't  22 require me to take a stand on APA's particular  23 position on arbitration.  24 <b>BY MR. TOAL:</b>  25 <b>Q</b> So a fact-finder will make these</p>	<p style="text-align: right;">53</p> <p>1 <b>(Farber-3 Salamat's calculation of</b>  2 <b>damages based on Farber model marked for</b>  3 <b>identification.)</b>  4 <b>BY MR. TOAL:</b>  5 <b>Q</b> Okay. Let me show you a document  6 marked Farber Exhibit-3, which contains  7 Mr. Salamat's calculation of damages based on your  8 model.  9 If I could direct your attention to page two  10 of this document. Do you see figure one there?  11 <b>A</b> Yes. I never saw these numbers before.  12 <b>Q</b> Okay. So that's what I was going to  13 ask you.  14 So Farber seniority list number one is what  15 you presented as your best estimate?  16 <b>A</b> Okay.  17 <b>Q</b> And do you see that he calculates  18 \$1.326 billion in damages?  19 <b>A</b> Yes.  20 <b>Q</b> Okay. And then you understand lists  21 two and three to be the upper and lower bounds that  22 you designated?  23 <b>A</b> Yes.  24 <b>Q</b> Okay. And do you see for the lower  25 bound he has calculated \$1.04 billion as damages?</p>
<p style="text-align: right;">52</p> <p>1 determinations, but I'm asking you to assume as a  2 matter of fact that the APA was actually unwilling  3 to arbitrate seniority integration, and that the APA  4 also had the ability to unilaterally determine a  5 merged seniority list. Would that change your  6 analysis if you take those -- take those as facts?  7 <b>MR. PRESS:</b> I object to the form of the  8 question. He just answered that question and he  9 told you why -- his testimony was what it was.  10 <b>MR. TOAL:</b> Allen, that's a speaking  11 objection.  12 <b>MR. PRESS:</b> No, I'm not.  13 <b>MR. TOAL:</b> You have no -- you can  14 object to the form of the question and move on. You  15 have to stop coaching the witness.  16 <b>MR. PRESS:</b> That -- well, that doesn't  17 preserve anything, Mr. Toal.  18 <b>MR. TOAL:</b> That does preserve your  19 objection. All you have to do is object to the form  20 of the question.  21 <b>THE WITNESS:</b> You are just bringing  22 back the God scenario. Once you put in your  23 hypothetical that the APA can unilaterally impose  24 what they want, God gave the APA power. Sure, that  25 affects the analysis.</p>	<p style="text-align: right;">54</p> <p>1 <b>A</b> Yes.  2 <b>Q</b> And do you have any basis for assessing  3 whether those calculations are accurate or not as  4 you sit here today?  5 <b>A</b> No, no. Except that they are in the  6 right order. This -- this -- the lower bound is  7 lower than the -- the -- my preferred estimate, and  8 -- which is, in turn, lower than the upper bound.  9 <b>Q</b> Okay. So when you used the term lower  10 bound, what did you -- what did you mean by that  11 term?  12 <b>A</b> Simply saying when I came up with  13 the -- the -- my preferred -- what I'll call my  14 preferred estimate, which is the 1.326 billion -- I  15 didn't come up with a number, but I came up with a  16 list, we said we understand, as in any -- any  17 analysis that we tend to do calculating damages,  18 when you are looking at a sample of other cases  19 that -- where -- that you use as benchmarks,  20 essentially, that there is random variation. And we  21 wanted just some sense of -- you say the lower --  22 for the lower bound, some sense, if we said, look,  23 we have now seven comparable situations, what would  24 be reasonable -- you know -- what -- what might be  25 reasonable lower bound on damages?</p>

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<p style="text-align: right;">55</p> <p>1 We say, let's get out into the towel, we call  2 it the towel, to the extreme of our seven cases, and  3 we take -- we actually drop the most extreme, and  4 use as our lower bound the -- the -- like the six of  5 the seventh, let's say. You know what I mean? So  6 it is just meant to illustrate. You know, there  7 could be some variation. We understand that there  8 are things that we don't observe about every case,  9 and that every case is a little bit different, so we  10 take the mean and then we say, let's perturb it one  11 way or the other to give us bounds. That's all we  12 do. We don't mean it in a -- the sense that  13 95 percent of the time it will be below this or  14 above that. We are not thinking like that.  15 Q So you acknowledge the possibility that  16 there could -- there could have been an alternative  17 seniority integration list in the absence of any  18 breach of a duty of fair representation that was  19 below your lower bound; correct?  20 A It's a possibility.  21 Q And you can't quantify what the  22 possibility is that the -- any alternative list  23 would have been below your lower bound; correct?  24 A I've not done that, no.  25 Q And you can't do that; correct?</p>	<p style="text-align: right;">57</p> <p>1 Q Well, your lower bound was over a  2 billion dollars; correct?  3 A Yes.  4 Q And certainly the 647 million is  5 substantially below your lower bound; correct?  6 A Well, let me be clear about something.  7 This is -- this is Mr. Salamat's calculation of  8 based on my lower bound list. It is not my lower  9 bound estimate of dollars. I did not come up with a  10 lower bound estimate of dollars. I came up with a  11 list, and Mr. Salamat converted that to a dollar  12 amount. So don't -- please don't -- I'm saying  13 please don't refer to it as my lower bound dollar  14 estimate.  15 Q His calculation based on your lower  16 bound estimate, his own estimates are substantially  17 below that -- that figure; correct?  18 A They are below my figure, yes.  19 Q And you don't adopt Mr. Salamat's  20 calculation of your -- your lower bound numbers or  21 any of your other models; is that correct?  22 A What do you mean by adopt?  23 Q Well, do you -- do you endorse them and  24 say they are correct?  25 A I don't know anything about</p>
<p style="text-align: right;">56</p> <p>1 A I'm not sure, to be honest with you.  2 Q In any event, you haven't done it?  3 A I have not done it.  4 Q Now, if you take a look at the  5 conclusion --  6 A Are we looking at the same document?  7 Q No. This is Farber Exhibit-2. It's on  8 page 48.  9 Do you see the heading that says summary of  10 damages, under different lists?  11 A Yes.  12 Q So the bottom of the first paragraph  13 under that heading says, using a conservative  14 assumption that there was no multiplier effect when  15 employing several strategies, I estimated that there  16 is a 73 percent probability that ALPA's violation  17 has caused \$887,409,179 in damages to the TWA  18 pilots, is therefore viable for \$647,808,701 in  19 unmitigated damages. Do you see that?  20 A Yes.  21 Q Okay. So Mr. Salamat's estimate  22 whether you use the 887 million or the 647 million  23 falls substantially below your lower bound; correct?  24 A I wouldn't use the word substantially.  25 They are below my lower bound.</p>	<p style="text-align: right;">58</p> <p>1 Mr. Salamat's analysis.  2 Q Okay. So you express no opinion as to  3 whether they are correct or not?  4 A That's correct.  5 Q So you see in Mr. Salamat's report when  6 we looked at page ten, he calculated with his linear  7 model of probabilities, the number 73 percent?  8 A Yes.  9 Q And if you look at the bottom of page  10 nine, he says, as shown in figure three, by  11 assigning probabilities to each form of influence,  12 Delta importance was assigned at three percent,  13 Delta perception at five percent, and abandonment at  14 two percent. A linear of the impact of ALPA's  15 actions would predict a 73 percent chance of  16 creating an agreement. Do you see that?  17 A Yes.  18 Q And then if you go back to the page we  19 were looking at before, page 48, do you see that  20 Mr. Salamat is discounting his \$887 million figure  21 by that 73 percent probability to arrive at  22 647 million?  23 A I haven't done the arithmetic. Are you  24 telling me that 647, et cetera, is 73 percent of  25 887?</p>

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<p style="text-align: right;">59</p> <p>1 Q That's -- when I calculated it, it was.</p> <p>2 A I have not done that calculation.</p> <p>3 Q Okay. Do you -- do you think it would</p> <p>4 be appropriate to discount any quantification of</p> <p>5 your model by the -- the probability that an</p> <p>6 agreement would have been reached between the TWA</p> <p>7 MEC and the APA?</p> <p>8 A I really have no opinion about</p> <p>9 Mr. Salamat's methodology. I have not read what he</p> <p>10 has done. I've not studied it. I really can't tell</p> <p>11 you whether it's appropriate or not.</p> <p>12 Q I'm really asking about your</p> <p>13 methodology and whether you think it would be</p> <p>14 appropriate to -- to discount any quantification</p> <p>15 that's derived from your model by the likelihood</p> <p>16 that an agreement would have been reached.</p> <p>17 A You mean a negotiated agreement?</p> <p>18 Q A negotiated agreement.</p> <p>19 A No.</p> <p>20 Q What about by a combination of the</p> <p>21 likelihood of a negotiated or an arbitrated</p> <p>22 agreement?</p> <p>23 A You need to understand, again, that I</p> <p>24 believe that a merged seniority list would have</p> <p>25 emerged with probability one. However it was done,</p>	<p style="text-align: right;">61</p> <p>1 one way or the other.</p> <p>2 Q So if the APA could have implemented a</p> <p>3 list unilaterally, doesn't that require you to</p> <p>4 adjust your figure based on the possibility that no</p> <p>5 arbitrated or negotiated list would have been</p> <p>6 reached?</p> <p>7 A No.</p> <p>8 Q Why not?</p> <p>9 A Because what I'm saying is that in</p> <p>10 the -- what I'm saying is, in a world, in the</p> <p>11 hypothetical world where ALPA did not violate its</p> <p>12 duty of fair representation, what would have</p> <p>13 happened is what happened on average in the seven</p> <p>14 cases. This is the expectation. In those</p> <p>15 comparable cases, too, there was some chance that</p> <p>16 there could be a unilateral imposition, and there</p> <p>17 wasn't or there was, I don't know. And it's</p> <p>18 simply -- I'm simply saying my estimate is an</p> <p>19 estimate of the mean. I don't need to discount the</p> <p>20 mean. This is what happened in comparable cases.</p> <p>21 Q But the comparable cases you look at</p> <p>22 are only arbitrations; correct?</p> <p>23 A Oh, no. I think there is one case</p> <p>24 that's not.</p> <p>25 Q Okay. Did you look at -- did you try</p>
<p style="text-align: right;">60</p> <p>1 there would have been a merged seniority list, so</p> <p>2 there is no discounting to be done.</p> <p>3 Q Do you deny that one of the</p> <p>4 possibilities for creation of a merged seniority</p> <p>5 list was that the APA would determine what list to</p> <p>6 implement?</p> <p>7 A What I'm saying is that my whole -- my</p> <p>8 analysis is based on the idea that what would have</p> <p>9 happened in this case is basically what happened on</p> <p>10 average in a set of comparable cases. And,</p> <p>11 therefore, I'm -- I'm -- I'm not making any</p> <p>12 assumption at all about the mechanism. And as a</p> <p>13 result, I'm simply calculating a list and</p> <p>14 saying this is -- if we did -- not we, but if the</p> <p>15 TWA/American seniority lists were merged in a way</p> <p>16 that looked a lot like what happened in the</p> <p>17 comparable cases on average, here is what we would</p> <p>18 have gotten. I'm not opining at all about how to</p> <p>19 calculate -- how to convert my list into a dollar</p> <p>20 figure. I can't discount a list.</p> <p>21 Q My question is whether your -- in your</p> <p>22 analysis, you are excluding the possibility that the</p> <p>23 APA could determine unilaterally what the merged</p> <p>24 seniority integration list would look like.</p> <p>25 A I'm not making an assumption about that</p>	<p style="text-align: right;">62</p> <p>1 and calculate the proportional difference in means</p> <p>2 from negotiated lists?</p> <p>3 A What you'll see in -- in -- in table</p> <p>4 one, in my report, is a list of the cases that we</p> <p>5 were able to calculate our statistic for. And I</p> <p>6 know at least one of our seven comparables was</p> <p>7 negotiated. I don't know -- I honestly don't know</p> <p>8 about the rest --</p> <p>9 Q So --</p> <p>10 A -- as I sit here. I could find out.</p> <p>11 Q So if you had information concerning</p> <p>12 negotiated lists, do you think they would be</p> <p>13 appropriate for inconclusion in your analysis?</p> <p>14 A Yes.</p> <p>15 Q And if you had information for lists</p> <p>16 that were determined unilaterally, would those be</p> <p>17 appropriate for inclusion in your analysis?</p> <p>18 A Yes. Again, inclusion in my analysis</p> <p>19 in terms of table one, would it be listed in table</p> <p>20 one, yes. And the question of would it be made into</p> <p>21 the comparables, that depends on the -- on the other</p> <p>22 factors. But certainly whether it is arbitrated or</p> <p>23 negotiated, or even imposed, that would -- that</p> <p>24 ought not be a relevant factor.</p> <p>25 Q Do you have any expertise in assessing</p>

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<p style="text-align: right;">63</p> <p>1 what would have happened in the absence of a breach 2 of a duty of fair representation? 3 A No. 4 Q You are not offering any expert 5 opinions on what would have happened in the absence 6 of a breach by ALPA of the duty of fair 7 representation; correct? 8 A No. That's not correct. 9 Q Are you offering opinions about what 10 would have happened? 11 A That's exactly what my list is. It is 12 an estimate of what would have happened absent 13 ALPA's breach of their duty of fair representation. 14 Q And what -- what permits you to offer 15 an expert opinion about what would have happened in 16 the absence of a breach of duty of fair 17 representation? 18 A You are asking what -- on what basis do 19 I do that? 20 Q Yeah. 21 A Okay. I'm using -- I'm using a common 22 method in -- in economics, and labor economics in 23 particular, when there is -- while that comes not 24 from breach of duty of fair representation, but -- 25 but there is allegations of some difference --</p>	<p style="text-align: right;">65</p> <p>1 sample of seven? 2 A I believe so. I would have to 3 double-check. 4 Q Those are the ones that you -- those 5 are the ones that you determined to be comparable; 6 correct? 7 A That's correct. 8 Q Did you assess in which of those cases 9 the union representing the pilots of the acquiring 10 airline had the ability unilaterally to determine 11 what the seniority list would look like? 12 A No. 13 Q And do you know whether, in any of 14 those cases, the pilots of the acquiring airline had 15 a unilateral ability to determine what the seniority 16 list would look like? 17 A No, I don't. 18 Q And to the extent that in this case the 19 APA did have the unilateral ability to determine 20 what the list would look like, the seven 21 transactions in your sample would not be comparable, 22 at least in that respect; correct? 23 A No. 24 <b>MR. PRESS: I object to the form of the</b> 25 <b>question. It's an incomplete hypothetical.</b></p>
<p style="text-align: right;">64</p> <p>1 difference in treatment, difference in behavior, and 2 you are saying what would have happened absent this 3 difference of treatment. 4 The simplest possible example is imagine sex 5 discrimination in pay. Women earn less than men. 6 We want to know what women would earn had they had 7 not been discriminated against in pay. The best 8 thing you do is to say, well, let's find either a 9 place where women are not discriminated against and 10 look at their pay there, or let's find men in 11 similar jobs and ask what they are paid there, and 12 say that's what women would have earned but for the 13 bad act, the discrimination. 14 So all -- all I'm really doing is taking that 15 approach of comparing outcomes here where there is 16 some allegation of some illegal behavior, to another 17 situation where there isn't, and -- and looking at 18 the difference -- the differences between those two. 19 And, you know, I've done this before. Labor 20 economists do this in their work all the time. It 21 is commonly accepted as a technique for 22 understanding the -- the effects of certain 23 behaviors. 24 Q So your sample includes arbitrated 25 results in one negotiated result; correct? Your</p>	<p style="text-align: right;">66</p> <p>1 <b>THE WITNESS: I don't accept the view</b> 2 <b>that the APA had the right unilaterally to impose</b> 3 <b>the terms. They had a contract that said they had</b> 4 <b>the right, but they -- they needed to engage in a</b> 5 <b>negotiation, which they could have well waived that</b> 6 <b>right. And it's -- so I -- I honestly don't</b> 7 <b>understand the hypothetical.</b> 8 <b>BY MR. TOAL:</b> 9 Q Well, I -- I understand that you 10 disagree that the APA -- APA had the right to impose 11 a list unilaterally. If you assumed that they did, 12 however, then at least in that respect, the 13 American/TWA transaction would not be comparable to 14 the seven transactions that you determined to be 15 comparable on your list; correct? 16 A I'm -- I'm going to come back to the 17 God example. If, in fact, God gave the APA the 18 right to do whatever the heck they wanted, and they 19 didn't -- and that's the way the world was, then -- 20 and there was nothing anyone could do about it, no 21 ALPA, no anyone could do anything about it, then 22 that would make it sui generis. 23 Q You -- you said you are assuming that 24 the APA had to participate in negotiations; is that 25 correct?</p>

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<p style="text-align: right;">67</p> <p>1       A    I said all I'm assuming -- all I'm 2   assuming is that had ALPA not shirked its duty of 3   fair representation, that the outcome would have 4   been similar on average -- to what happened on 5   average in these other cases. I'm not making any 6   particular assumption about process at all. 7       Q    And why do you assume that the result 8   would have been equal to the average as opposed to 9   any other point, any other particular transaction on 10   your list? 11       A    Because the average -- again, I'm -- 12   I'm going to go back to the -- to the established 13   scientific basis for how we do these things, which 14   is simply we say, look, what we have to do is say, 15   what do we expect -- what do we expect to have 16   happened in this case. And the way what we expect 17   to have happened is you take the average of what 18   happened in the set of comparable situations, or 19   what do we expect this person to earn, this woman to 20   earn. It is what ten similarly situated men earned 21   for doing the same work, in the same industry, et 22   cetera. And while it is true there can be some 23   variation and this person might earn a little bit 24   more or a little bit less, I'm giving you my best 25   estimate. It is an estimate. It is not an edict</p>	<p style="text-align: right;">69</p> <p>1   instruction did you give to them about which 2   findings should be reported to you and which need 3   not be? 4       A    Well, what we did was, you know, we 5   first thought about -- we read some background -- we 6   all read some background stuff. Basically, let's 7   see if I can find -- some of the legal documents, 8   you know, the complaint, the motions, memorandums, 9   et cetera, et cetera. And we got a feel for the 10   case, what it was about. We thought about how are 11   we going to come up with an estimate of what would 12   have happened but for the breach of duty of fair 13   representation, and we hit -- we realized that the 14   best way to do this was to look at comparable cases. 15       So we thought, where do we get information on 16   what happened when the seniority lists were merged 17   elsewhere? And arbitration awards turned out to be 18   right on point and also quite useful because 19   arbitrators tend to be fairly verbose and give a lot 20   of discussion of what's going on. So we -- I read a 21   number of them. And I said, okay, here is what we 22   want to know. What factors are arbitrators saying 23   they are considering? 24       By the way, another important document for us 25   was the ALPA merger policy which talked about the</p>
<p style="text-align: right;">68</p> <p>1   that says this is exactly what it will be, but this 2   is an estimate. 3       Q    And, indeed, even between your 4   settlement's calculations of your lower and upper 5   bounds, there is a \$500 million difference between 6   the two; correct? 7       A    I would have to -- I would have to look 8   at the numbers again. Where is that? 9       Q    It's in Farber Exhibit-3, page two. 10       A    Yes. \$500 million between the upper 11   bound and the lower bound. 12       Q    Now, if you turn to your report, which 13   is Farber Exhibit-1, you have an appendix B. 14       A    Yes. 15       Q    And does Exhibit-B contain all the 16   documents that you reviewed in connection with the 17   preparation of your report? 18       A    Yes. I have to -- I have to -- I 19   really have to -- let me be clear on this. I did 20   not personally review every document in this report. 21   I have people working for me who are under my 22   direction. I reviewed a lot of them, but they 23   reviewed some of these, too, and reported to me when 24   they found something that was important. 25       Q    And what -- what advice -- what</p>	<p style="text-align: right;">70</p> <p>1   factors that ought to be considered in -- in merging 2   seniority lists, which is a document that's not 3   directly applicable because it is about -- I believe 4   it is mostly meant to be about mergers between two 5   airlines that are both -- whose pilots are both 6   represented by ALPA, but it nonetheless lists a set 7   of factors that arbitrators seem to have adopted in 8   many cases even when both airlines are not ALPA 9   airlines. 10       And we realized our -- and as I went through 11   this -- I'm giving you a long answer, I know. 12   What -- what the arbitrators were talking about is a 13   whole set of factors that led them to shade their 14   decision in favor of one airline or the other, 15   having to -- and so I asked my people, when you are 16   reading this, we need to be able to figure out 17   merger by merger, what the -- you know, where things 18   stood with regard to the two airlines on these 19   factors. You have to look for direct statements 20   about these factors. 21       Then I said, we also need to have a metric, a 22   number, so I need to get mergers where -- where I 23   have enough information on the merger process to be 24   able to calculate a summary statistic of the merged 25   lists. In other words, that's that proportional</p>

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<p style="text-align: right;">71</p> <p>1 mean difference statistic. And so -- so I tasked my 2 people with reading those reports, looking for other 3 documents that could help give us the information on 4 merger by merger of both the background and the 5 outcome. 6 Q How much time did you personally spend 7 reviewing these documents? 8 A Without consulting my time sheets, I 9 couldn't tell you exactly how many hours I did. 10 Q And what's your best estimate, as you 11 sit here today? 12 A Two or three days. 13 Q And how long were those days? 14 A My days are normal days, you know eight 15 hours, nine hours, ten hours sometimes. 16 Q And how much time -- 17 A When I was younger, my days were 18 longer. 19 Q How much time did you spend on this 20 engagement overall, personally? 21 A This past year? 22 Q From the time you were retained until 23 -- 24 A -- this morning. 25 Q Until today.</p>	<p style="text-align: right;">73</p> <p>1 Q And -- 2 A It's hard. You know, it wouldn't 3 surprise me that there is something that somehow I 4 looked at didn't make it on the list, but we tried 5 to be quite careful about that. 6 Q Did you have access to other documents? 7 A Well, we all have access to the web. 8 I'm not sure what you mean. 9 Q Did you have other -- access to other 10 documents related to this case? 11 A I don't -- I don't quite know how to 12 answer that. You are asking me, do I have access to 13 things I didn't look at so they didn't make it into 14 this report? 15 Q Yeah. 16 A I don't know. I assume so because I 17 presume I could have asked for some things that I 18 didn't think of, and, you know, TWA pilots' 19 attorneys might have been able to give it to me, for 20 example. I don't know. Maybe there is some legal 21 documents. I just don't know. 22 Q Well, who -- who determined the 23 documents to which you would have access? 24 A Well, as these things generally go, TWA 25 pilots and lawyers, when they retained us, started</p>
<p style="text-align: right;">72</p> <p>1 A I can tell you that it's less than ten 2 days, more than three days -- more than three days. 3 Q And with whom did you work when you 4 referred to members of your staff? 5 A Okay. I work with a small firm in 6 Princeton called Ashenfelter and Ashmore, and David 7 Ashmore is a principal of that firm, and he is -- is 8 -- the way -- let me tell you how we operate. 9 Basically, I'm the expert. He runs the day-to-day 10 under my direction, and we -- and then we have a 11 staff of three Ph.D. economists. Actually over the 12 time period this has gone on for a while, probably 13 there were four staff economists involved who did 14 the work under my oversight, David's day-to-day 15 supervision, collecting information, you know, 16 putting it in the spreadsheet, doing the calculated 17 we wanted. You know, I would meet with the staff 18 regularly to talk about where we were, ask 19 questions. I'd look at documents that they thought 20 were ambiguous to help them out and so on. 21 Q Okay. Other than the documents listed 22 on appendix B to your report, did you consider any 23 other documents? 24 A Not that I recall sitting here now. I 25 mean --</p>	<p style="text-align: right;">74</p> <p>1 us off with some documents that they thought we 2 ought to look at, the complaint and so on, and the 3 jury award. You know, as we know, TWA has already 4 been found guilty of their duty of fair 5 representation, of violating their duty of fair 6 representation. And we then said we need these 7 arbitration awards. As I understand it, counsel for 8 APA, or APA through counsel -- through counsel 9 provided us with arbitration awards. I think that's 10 right. I'm sure we got them indirectly through the 11 TWA pilot attorneys. We say we need arbitration 12 awards, and they say, okay, we know where to get 13 those for you, and they got them. And then we did 14 some web searching to find outcomes of some other 15 cases that -- and so on. So -- 16 Q Did you ask for any documents that you 17 weren't able to get access to? 18 A No. Not that I recall, I should say. 19 Not that I recall. This is not a case where I felt 20 very frustrated by lack of availability of things. 21 Q And you don't have a recollection of 22 asking for any other documents? 23 A No. That's correct. That's correct. 24 Q Did you review any of the filings in 25 TWA's bankruptcy proceeding?</p>

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<p style="text-align: right;">75</p> <p>1 A No.</p> <p>2 Q Did you think that would be relevant to</p> <p>3 your analysis?</p> <p>4 A I've -- I've never seen a bankruptcy</p> <p>5 filing. I'm not sure what's in them. So it's --</p> <p>6 no. I don't think so, no.</p> <p>7 Q Was TWA's financial condition at the</p> <p>8 time of the transaction with American relevant to</p> <p>9 your analysis?</p> <p>10 A Yes.</p> <p>11 Q In what way?</p> <p>12 A A part -- one of the factors we</p> <p>13 considered in choosing comparable merger lists was</p> <p>14 the financial condition of the acquired carrier.</p> <p>15 And as a result, in order to make them comparable,</p> <p>16 we tried to find cases where -- with some, at a</p> <p>17 crude level, similarity with TWA's financial</p> <p>18 condition. So, of course, TWA's financial condition</p> <p>19 was relevant.</p> <p>20 Q And if you had determined that TWA was</p> <p>21 either not flying at the time of the transaction or</p> <p>22 that it imminently would not be flying, would that</p> <p>23 have affected your analysis?</p> <p>24 A Potentially.</p> <p>25 Q In what way?</p>	<p style="text-align: right;">77</p> <p>1 either were not flying or imminently were expected</p> <p>2 not to fly?</p> <p>3 MR. PRESS: Objection. That's been</p> <p>4 asked and answered.</p> <p>5 MR. TOAL: I didn't finish my question.</p> <p>6 BY MR. TOAL:</p> <p>7 Q Would that have led you to change your</p> <p>8 comparables to the group that was either not flying</p> <p>9 or imminently expected not to fly?</p> <p>10 MR. PRESS: I object to form. That's</p> <p>11 been asked and answered.</p> <p>12 THE WITNESS: I -- I never created such</p> <p>13 a group, but it would have certainly shifted --</p> <p>14 would have likely shifted the set of comparables,</p> <p>15 yes.</p> <p>16 BY MR. TOAL:</p> <p>17 Q Did you ever calculate what the</p> <p>18 proportional difference in mean ranks was for those</p> <p>19 airlines where the acquired airline was either not</p> <p>20 flying or was expected imminently not to be flying?</p> <p>21 A Well, table one contains the</p> <p>22 proportional mean difference -- the proportional --</p> <p>23 the proportional mean difference for all of the</p> <p>24 airlines we were able -- for which we were able to</p> <p>25 calculate it, but I never grouped them in the way</p>
<p style="text-align: right;">76</p> <p>1 A I don't know. I didn't do that</p> <p>2 analysis.</p> <p>3 Q But would it have -- have affected the</p> <p>4 other transactions that you viewed as comparables?</p> <p>5 A Potentially, yes.</p> <p>6 Q Potentially or actually?</p> <p>7 A I would have to look at the list, but I</p> <p>8 assume it would change at least some of the</p> <p>9 comparables, yes.</p> <p>10 Q And did you make determinations in your</p> <p>11 report based on which airlines either were not</p> <p>12 flying or were at imminently at risk of not flying</p> <p>13 on the one hand, and airlines that were in a</p> <p>14 weakened financial condition but still flying and</p> <p>15 expected to continue flying for the foreseeable</p> <p>16 future?</p> <p>17 A I -- I -- I don't know what you mean by</p> <p>18 foreseeable future, but were not imminently going to</p> <p>19 shut down. But were -- I mean -- I don't know what</p> <p>20 it means to fly for the foreseeable future, but I</p> <p>21 did make distinctions like that, yes.</p> <p>22 Q And if you had determined that TWA was</p> <p>23 at risk of imminent grounding of its planes, would</p> <p>24 that have caused you to shift the group of</p> <p>25 comparables from those where the -- the airlines</p>	<p style="text-align: right;">78</p> <p>1 you are suggesting.</p> <p>2 Q Take a look at table one of your</p> <p>3 report. This is right after your signature page.</p> <p>4 A Yes, yes.</p> <p>5 Q Now, of this group, which of the</p> <p>6 acquired airlines on this list fall within the</p> <p>7 category of not flying at the time of the</p> <p>8 acquisition or expected to stop flying imminently?</p> <p>9 A I -- I -- I honestly -- I want to say</p> <p>10 Lynx, but beyond Lynx, I'm not sure. I don't -- I</p> <p>11 haven't memorized their status.</p> <p>12 Q Did you ever do an analysis of how the</p> <p>13 proportional difference in mean rank for the</p> <p>14 American Airline/TWA transaction compared to those</p> <p>15 in which the acquired airline either was not flying</p> <p>16 or was expected to stop flying imminently?</p> <p>17 A No.</p> <p>18 Q As you look at this chart, are you able</p> <p>19 to make a determination about how the proportional</p> <p>20 mean difference in ranks for TWA/American Airlines</p> <p>21 would compare to those other airlines -- those other</p> <p>22 transactions?</p> <p>23 A No, no.</p> <p>24 Q Do you agree that the proportional mean</p> <p>25 rank for the American/TWA transaction is roughly</p>

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<p style="text-align: right;">79</p> <p>1 comparable to those for the Continental/Frontier, 2 Republic/Midwest, Southwest/AirTran and 3 Republic/Lynx transactions? 4 A Yes. 5 Q Okay. So you said you never -- never 6 looked at the bankruptcy filings for TWA; correct? 7 A Correct. 8 Q Did you ever look at TWA's public 9 filings leading up to the time of its bankruptcy? 10 A No. 11 Q Did you ever look at any analyst 12 reports concerning TWA at or around the time of its 13 bankruptcy? 14 A No. 15 Q Did you ever look at any bond ratings 16 for TWA leading up to the time of its bankruptcy? 17 A No. 18 Can I -- can I amend an answer? 19 Q Sure. 20 A Only because I'm not sure what a 21 bankruptcy filing is. You mean the papers that TWA 22 filed going into bankruptcy? 23 Q Yeah. Did you look at any of those? 24 A No. 25 Q Did you look at any of the testimony</p>	<p style="text-align: right;">81</p> <p>1 Q Did you learn anything about the 2 substance of his testimony? 3 A Not a thing. 4 Q Were you made aware that TWA's chief 5 financial officer was deposed in this case? 6 A No. 7 Q Did you read any congressional 8 testimony concerning the proposed transaction 9 between American and TWA? 10 A I had no idea there was congressional 11 testimony. 12 Q So the answer is no? 13 A Yes. 14 Q Would any of those things have been 15 helpful to your analysis? 16 MR. PRESS: I object to the form of the 17 question. How could he -- I object to the form of 18 the question. Calling for speculation. 19 THE WITNESS: Without -- without 20 knowing what's in them, I don't know. 21 BY MR. TOAL: 22 Q Is there the possibility that any of 23 those things would have been helpful to your 24 analysis? 25 MR. PRESS: Same objection.</p>
<p style="text-align: right;">80</p> <p>1 from the bankruptcy proceeding? 2 A I looked at some. I don't know whether 3 it was testimony or reports. I don't think I looked 4 at testimony. 5 Q Did you read any of the judge's rulings 6 from the bankruptcy proceeding? 7 A No. Now that I think about it, I 8 didn't read any documents from the proceeding. 9 I'm sorry. I don't have anything to amend. I 10 was thinking of something different. 11 Q Did you read any contemporaneous press 12 coverage concerning TWA's financial condition 13 leading up to the time of its bankruptcy? 14 A No. 15 Q Did you read any testimony from this 16 case concerning TWA's financial condition leading up 17 to the time of its bankruptcy? 18 A No. 19 Q Did -- did anyone make you aware that 20 TWA's chief executive officer was deposed in this 21 case? 22 A I -- I think I learned that at 23 breakfast this morning. 24 Q Okay. And what did you learn? 25 A That he testified yesterday.</p>	<p style="text-align: right;">82</p> <p>1 THE WITNESS: There is always a 2 possibility. 3 BY MR. TOAL: 4 Q You were trying to determine what TWA's 5 financial condition was at or around the time of the 6 bankruptcy. Do you have views about the best way to 7 do that? 8 A For the purpose -- for my purposes 9 here, I think I did what I needed to do. 10 Q So not for your purposes here. If -- 11 if you were trying to understand, given your 12 background as an economist, what TWA's financial 13 condition was leading up to the time it declared 14 bankruptcy, do you have knowledge of the types of 15 sources that you would consult? 16 A I've never studied bankruptcy. I would 17 have to know for what purpose. I honestly -- I 18 honestly don't know how to answer that question. 19 Q I'm -- I'm not asking you a bankruptcy 20 question. I'm asking you if you are trying to 21 determine TWA's financial condition -- 22 A For what purpose? 23 Q For purposes of -- 24 A Let me get that. I apologize -- 25 Q For purposes of understanding what its</p>

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<p style="text-align: right;">83</p> <p>1 financial condition was prior to the American 2 Airlines transaction. 3 <b>MR. PRESS:</b> I object to the form of the 4 question. You haven't answered his problem with the 5 question. 6 <b>THE WITNESS:</b> For -- for purposes of -- 7 of my analysis, I really only need an answer to a 8 very narrow question, which is, would I expect that 9 they keep flying, and I satisfied myself that they 10 were flying. And, frankly, filing for bankruptcy 11 has very little to do, if anything to do, with 12 whether you stop flying. So, no, I don't -- I 13 haven't thought about that. 14 <b>BY MR. TOAL:</b> 15 <b>Q</b> So my question is a little bit 16 different. My question is, if you are trying to 17 understand what TWA's financial condition was, what 18 sources would you consult to do that? 19 <b>MR. PRESS:</b> I object to the form of the 20 question for the same reasons. 21 <b>THE WITNESS:</b> I would have to ask 22 somebody. I mean, in the sense that -- in terms of 23 their detail. I'm a labor economist, not a capital 24 economist. So I would -- I'm not sure what I would 25 consult to get a -- a detailed picture of TWA's</p>	<p style="text-align: right;">85</p> <p>1 <b>BY MR. TOAL:</b> 2 <b>Q</b> Professor Farber, when you testified 3 before the break that you were -- were excluding or 4 not accepting the possibility of a unilateral 5 determination of the seniority integration list by 6 the APA, were you also excluding the possibility 7 that the APA could determine the merge seniority 8 integration list in discussions and negotiations 9 with American Airlines? 10 <b>A</b> Only American Airlines? 11 <b>Q</b> Yes. Without the participation of the 12 TWA MEC. 13 <b>A</b> Yes. Yes. 14 <b>Q</b> You were excluding that possibility? 15 <b>A</b> I was simply saying -- I was not -- let 16 me -- let me back -- let me say again. I -- I don't 17 actually -- I don't actually specify the process by 18 which a merged seniority list would be reached. I'm 19 simply saying that had ALPA not shirked its duty of 20 fair representation, the merge -- the merged 21 seniority list on average would have looked like the 22 average of those groups, of the comparable group, 23 however it was done. Whether it was done, you know, 24 unilaterally with American Airlines, with TWA, with 25 an arbitration. I don't specify the mechanism. I</p>
<p style="text-align: right;">84</p> <p>1 financial situation. 2 <b>BY MR. TOAL:</b> 3 <b>Q</b> No idea as you sit here today? 4 <b>A</b> Well, I probably would start, like 5 everyone does, I'd go on Google and I'd start 6 searching on TWA, on finances. I imagine if I did 7 that now, even though they haven't existed for ten 8 years, I could find something. 9 <b>Q</b> Okay. But that's not something that 10 you did; correct? 11 <b>A</b> That's correct. 12 <b>Q</b> Do you have the expertise to assess 13 what the financial condition of a company like TWA 14 was prior to the time of the American transaction? 15 <b>A</b> No. 16 <b>VIDEO SPECIALIST:</b> I have ten minutes 17 before I need to stop you and flip the tape over. 18 Whenever you want to take a break. 19 <b>MR. TOAL:</b> Okay. Why don't we go off 20 the record? 21 <b>VIDEO SPECIALIST:</b> The time is now 22 11:28 and this concludes tape number one. 23 (Brief recess.) 24 <b>VIDEO SPECIALIST:</b> The time is now 25 11:43 and we are back on the video record.</p>	<p style="text-align: right;">86</p> <p>1 don't need to make an assumption about that. 2 <b>Q</b> Do you recognize that in order for any 3 such list to come into existence, that the APA 4 either would have had to have agreed to the list or 5 would have had to agree to arbitrate the list -- 6 <b>A</b> I -- as I said, I don't make an 7 assumption one way or the other about how that would 8 work. American Airlines could -- could have put 9 pressure on the APA. I just don't -- I just don't 10 know. 11 <b>Q</b> But do -- do you have any understanding 12 of any way a merged seniority integration list could 13 come into existence without the APA either agreeing 14 to the list or agreeing to arbitrate the list? 15 <b>A</b> As I sit here, I would think that 16 that's quite likely, that that would be the -- the 17 way it would happen, one of those two ways. 18 <b>Q</b> And do you have any basis for saying 19 that the list that you have identified as your best 20 estimate is a list that the APA would have agreed 21 to? 22 <b>A</b> Yes. 23 <b>Q</b> And what is that basis? 24 <b>A</b> That basis is it's the average of what 25 happened in comparable cases where presumably both</p>

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<p style="text-align: right;">87</p> <p>1 sides were ably represented by their unions.</p> <p>2 Q And other than that, do you have any</p> <p>3 other basis for saying that the list that you</p> <p>4 identify as your best estimate is a list that the</p> <p>5 APA would have agreed to?</p> <p>6 A No.</p> <p>7 Q Now, have you reviewed the jury verdict</p> <p>8 in this case?</p> <p>9 A I've seen only a two-page sheet with</p> <p>10 checks on it, if I recall -- if I recall correctly.</p> <p>11 (Farber-4 Copy of the jury verdict</p> <p>12 marked for identification.)</p> <p>13 BY MR. TOAL:</p> <p>14 Q I'm going to show you a document that I</p> <p>15 will mark as Farber Exhibit-4, which is a copy of</p> <p>16 the jury verdict.</p> <p>17 If you could, let me know if you've seen a</p> <p>18 copy of that document before, please.</p> <p>19 A Yes, I have.</p> <p>20 Q And did this verdict give you insight</p> <p>21 into what the jury determined the particular breach</p> <p>22 of the duty of fair representation was?</p> <p>23 A No.</p> <p>24 Q Did you have any other source of</p> <p>25 information as to what the jury found as the</p>	<p style="text-align: right;">89</p> <p>1 Q Why not?</p> <p>2 A Because as I said, my method was simply</p> <p>3 to look at a set of comparable cases, and use the</p> <p>4 average of those comparable cases where presumably</p> <p>5 both sides were adequately represented by their</p> <p>6 unions, and say this is what would have happened but</p> <p>7 for whatever it was that ALPA did or didn't do.</p> <p>8 Q But you know, as a matter of fact,</p> <p>9 correct, that the APA did not agree to arbitrate the</p> <p>10 dispute it had with the TWA MEC over the merged</p> <p>11 seniority integration list; correct?</p> <p>12 A I know that -- yes.</p> <p>13 Q And you also know that, in fact, the</p> <p>14 APA did not agree to any of the merged seniority</p> <p>15 lists that the TWA MEC proposed; correct?</p> <p>16 A I do not know of any list that the APA</p> <p>17 accepted. That's correct.</p> <p>18 Q So isn't it necessary to your analysis</p> <p>19 that for the alternative lists that you proposed to</p> <p>20 have come into being, that something ALPA did or did</p> <p>21 not do would have led the APA to either agree to</p> <p>22 arbitration or agree to some list that the TWA MEC</p> <p>23 was proposing?</p> <p>24 A No.</p> <p>25 Q Why not?</p>
<p style="text-align: right;">88</p> <p>1 particular breach of the duty of fair</p> <p>2 representation?</p> <p>3 A Well, I -- I -- I don't have any --</p> <p>4 other than this, I don't have any idea about what</p> <p>5 the jury found. I do know what was alleged.</p> <p>6 Q But you don't know if the jury accepted</p> <p>7 some subset of that -- those allegations or all of</p> <p>8 them; correct?</p> <p>9 A As far as I can tell, this is all you</p> <p>10 get from the jury, right? You tell me. Is there</p> <p>11 more than this from the jury?</p> <p>12 Q This -- this is all I've seen. So, is</p> <p>13 it -- in response to my question, do you know</p> <p>14 whether the jury agreed that everything that was</p> <p>15 alleged was a breach of the duty of fair</p> <p>16 representation?</p> <p>17 A No.</p> <p>18 Q Does that bear upon your analysis?</p> <p>19 A No.</p> <p>20 Q Would it affect your determination of</p> <p>21 what the alternative merged seniority list would</p> <p>22 have looked like through negotiation if the APA had</p> <p>23 failed to do one thing that was alleged versus eight</p> <p>24 things that were alleged?</p> <p>25 A No.</p>	<p style="text-align: right;">90</p> <p>1 A I'm understanding your question to mean</p> <p>2 one of the lists that we saw -- one of the proposals</p> <p>3 that I saw from the TWA MEC. So that it might have</p> <p>4 been a different list that they negotiated jointly</p> <p>5 that they would have agreed to, not necessarily one</p> <p>6 proposed by the TWA MEC.</p> <p>7 Q In any -- in any event, there would</p> <p>8 have had to have been something that ALPA could have</p> <p>9 done to persuade the APA to agree to a list that was</p> <p>10 different from and better than Supplement CC;</p> <p>11 correct?</p> <p>12 A Yes.</p> <p>13 Q And what is it that you think that the</p> <p>14 -- that ALPA could have done to persuade the APA to</p> <p>15 agree to a list that was better than Supplement CC?</p> <p>16 A I don't have an opinion on that.</p> <p>17 Q Can you point to anything that you</p> <p>18 believe ALPA could have done to persuade the APA to</p> <p>19 agree to a list that was more favorable to the TWA</p> <p>20 pilots than Supplement CC?</p> <p>21 A I would suggest that they start by not</p> <p>22 waiving their right to arbitration and perhaps --</p> <p>23 and/or if they were going to waive their right to</p> <p>24 arbitration, get something concrete in return rather</p> <p>25 than simply a promise to use -- by American to use</p>

24 (Pages 87 to 90)

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<p style="text-align: right;">91</p> <p>1 their best efforts to create a fair and equitable 2 merger of the lists. That's -- 3 Q And if American Airlines presented its 4 deal with a condition that the -- that the TWA 5 pilots agree to waive the arbitration provision in 6 their collective bargaining agreement and present it 7 as a take-it-or-leave-it proposal, can you think of 8 anything that ALPA could have done to make it 9 unnecessary for the TWA pilots to waive their 10 arbitration protection? 11 A I don't know. 12 Q Can you think of anything, as you sit 13 here today? 14 A That's not -- I'm not -- I've not 15 studied that question. 16 Q Are you aware that TWA filed a motion 17 with the bankruptcy court to invalidate the TWA 18 pilots' collective bargaining agreement? 19 A No. 20 Q Would that affect your analysis? 21 A No. 22 Q Do you have an understanding of whether 23 that motion sought to invalidate the TWA pilots' 24 arbitration provision with respect to seniority 25 integration?</p>	<p style="text-align: right;">93</p> <p>1 the class in this case? 2 A No. 3 Q Have you spoken with any pilots at all 4 concerning this case? 5 A No. 6 Q Have you conducted any interviews as 7 part of your work on this case? 8 A No. 9 Q I would like to direct your attention 10 to page four of your report, which is Farber 11 Exhibit-1. 12 Take a look at paragraph eight of this report. 13 A sentence in the middle of that paragraph says, as 14 part of evaluating these losses, counsel for the 15 plaintiffs have asked me to analyze American's 16 acquisition of TWA and to generate an estimate of a 17 merged seniority list that would have resulted from 18 the combination of the two airlines had ALPA met its 19 duty of fair representation. Do you see that 20 language? 21 A Yes. 22 Q Were you asked by counsel to estimate a 23 merged seniority list that would have resulted from 24 the combination of the airlines if ALPA had met its 25 duty of fair representation, or to estimate the list</p>
<p style="text-align: right;">92</p> <p>1 A I -- I don't -- I didn't hear -- I 2 don't understand the question. 3 Q You have an understanding that one of 4 the objectives of the motion that TWA filed was, in 5 the event that the TWA pilots refused to waive the 6 arbitration provision regarding seniority 7 integration, that the bankruptcy court would agree 8 to invalidate it. 9 A Do I understand that? 10 Q Do you have that understanding? 11 A No. I -- I don't know. I didn't hear 12 about that. 13 Q And if such a motion had been filed, 14 would that affect your analysis? 15 A No. 16 Q Other than a waiver of the arbitration 17 provision, are you aware of any other actions that 18 ALPA could have taken that would have made the APA 19 more willing to agree to a seniority integration 20 list that was better than Supplement CC? 21 A No. 22 Q Have you ever spoken with any of the 23 named plaintiffs in this case? 24 A No. 25 Q Have you ever spoken with any member of</p>	<p style="text-align: right;">94</p> <p>1 that would have resulted? 2 A I'm not sure how to answer that. I 3 suppose to make the sentence grammatically correct, 4 the "A" needs to be a "the" or the "would" needs to 5 be a "could", just as a matter of grammar. So given 6 that the merged seniority list is qualified by 7 estimate of, I would say the merged seniority list. 8 Q And to your knowledge, was anything 9 resembling the list that you propose ever discussed 10 in negotiations between the TWA MEC and the APA? 11 A Not to my knowledge. 12 Q Do -- do you have any reason to 13 believe, based on the bargaining history between the 14 TWA MEC and the APA, that the list you proposed 15 would have been the end result of negotiations 16 between the parties in the absence of a breach of 17 the duty of fair representation? 18 A Yes. 19 Q And what's the basis for that belief? 20 A My analysis is that, on average, in 21 cases similar to this, this is the list that would 22 have resulted. 23 Q So is it your belief that the parties 24 would have departed from the structure of the list 25 they were discussing, and instead would have adopted</p>

25 (Pages 91 to 94)

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<p style="text-align: right;">95</p> <p>1 the list that you proposed as your best estimate?</p> <p>2 A Let's be clear. There is factored --</p> <p>3 my list is essentially a starting structure of an</p> <p>4 ultimate seniority list because it is quite likely,</p> <p>5 as I mentioned in my report, that other factors such</p> <p>6 as the fence around St. Louis, and equipment, and</p> <p>7 status would result in the names on the list in the</p> <p>8 order I put them being put into sub-lists that</p> <p>9 reflect all that stuff.</p> <p>10 Q Okay. So --</p> <p>11 A And -- and the list -- let me say --</p> <p>12 let me continue. Let me finish. And the proposals</p> <p>13 that were bandied about had a lot of discussion of</p> <p>14 those -- those issues, you know, of differences of</p> <p>15 equipment and so on, that I chose not to consider in</p> <p>16 constructing my list with the understanding that the</p> <p>17 list could be used as a starting framework to create</p> <p>18 a -- a list that made -- took account of differences</p> <p>19 and the status, and equipment, and domicile and so</p> <p>20 on.</p> <p>21 Q Okay. So you are not saying that the</p> <p>22 list that you proposed as your best estimate is the</p> <p>23 list that a negotiation in the absence of a breach</p> <p>24 by ALPA would have produced; correct?</p> <p>25 A Let me say it would -- it would</p>	<p style="text-align: right;">97</p> <p>1 proportional mean difference in ranks. In order to</p> <p>2 construct a list from that, you can do it in an</p> <p>3 infinite number of ways. The two that make sense</p> <p>4 are a bottom staple and a ratio of the rest or a top</p> <p>5 staple and the ratio of the rest. I could have just</p> <p>6 as easily come up with a staple and a ratio of the</p> <p>7 rest. But the bottom staple and a ratio of the rest</p> <p>8 was conservative to the sense it would yield smaller</p> <p>9 damages to the TWA pilots. And whenever I have an</p> <p>10 arbitrary choice to make, I like to try to make it</p> <p>11 in a conservative way. So the fact that there is no</p> <p>12 top staple was simply a choice I made to be</p> <p>13 conservative. There could have been a top staple.</p> <p>14 Q Could you have had a top staple and a</p> <p>15 bottom staple?</p> <p>16 A Absolutely.</p> <p>17 Q Why didn't you construct your list that</p> <p>18 way given that -- given the negotiating history</p> <p>19 between the parties?</p> <p>20 A Again, because that way would have</p> <p>21 yielded larger damages to TWA, and any choice I make</p> <p>22 of -- in other words, once you have a top staple and</p> <p>23 a bottom staple, you have a choice of how big each</p> <p>24 one is, and then how big the ratio in between them</p> <p>25 is. So that ultimately you have to make choices to</p>
<p style="text-align: right;">96</p> <p>1 probably not be the list that was written down, but</p> <p>2 it -- it would be implicit in the list, in whatever,</p> <p>3 you know, multipiece list they came up with would</p> <p>4 essentially be derived from my list. So it is</p> <p>5 not -- you know, it is not -- it is not appropriate</p> <p>6 to dismiss my list and say, well, this isn't what</p> <p>7 they would have come up with. In fact, it -- it is</p> <p>8 important, even if they -- even if they don't think</p> <p>9 about it that way, it is an important building block</p> <p>10 that they use then to say, okay, let's take the, you</p> <p>11 know, B767 pilots and -- and -- and what numbers are</p> <p>12 they? They would take them in order off of my list.</p> <p>13 Q So, for instance, your list has no top</p> <p>14 staple; correct?</p> <p>15 A That's correct.</p> <p>16 Q And based on the negotiating history,</p> <p>17 was even the TWA MEC taking the position that there</p> <p>18 should be no top staple on the list?</p> <p>19 A I don't know. I don't remember.</p> <p>20 Q Is that significant to your analysis,</p> <p>21 what the negotiating history was?</p> <p>22 A Yes. The fact that there is no top</p> <p>23 staple was a -- I mean, and I think we say this in</p> <p>24 the report, at the end of the day, the model that I</p> <p>25 used gives me this one number which is the</p>	<p style="text-align: right;">98</p> <p>1 construct the list. This is exactly why I say, you</p> <p>2 know, would my list be exactly what would come out</p> <p>3 person for person? It is -- it's a little bit hard</p> <p>4 to say, but what we chose to do was to say we want</p> <p>5 to make this comparable in overall effect to other</p> <p>6 mergers in a way that's most conservative, that</p> <p>7 yields the smallest damages to TWA pilots in order</p> <p>8 to protect ourselves from the criticism that we are</p> <p>9 simply making assumptions that make our damages as</p> <p>10 large as possible. In fact, the assumptions I make</p> <p>11 when I have an assumption to make are designed to</p> <p>12 make damages as small as possible, and the fact that</p> <p>13 they come out as large as they do when I make the</p> <p>14 assumptions to make them as small as possible, is</p> <p>15 testament to something. I mean, so -- that's a</p> <p>16 little discursive, I understand.</p> <p>17 Q Do you recognize that, based on the</p> <p>18 negotiating history between TWA, the TWA MEC and the</p> <p>19 APA, there is nobody in the negotiation talking</p> <p>20 about a list that wouldn't have a -- a section at</p> <p>21 the top reserved to American Airlines pilots?</p> <p>22 A Let me put -- if you would like me to,</p> <p>23 I will go back and construct a list with a top</p> <p>24 staple, if -- if my lawyers would like me to, and</p> <p>25 I'll get a big -- and then we can give it to the</p>

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<p style="text-align: right;">99</p> <p>1 other guy, and he will come back with a bigger 2 damage number. I can do that.</p> <p>3 Q Let -- let me ask you, if we were 4 concerned about, not just the aggregate number, but 5 determining the appropriate compensation for each 6 member of the class, it would be important to 7 construct your list in a way that reflected the 8 reality of what the parties were likely to agree to; 9 correct?</p> <p>10 MR. PRESS: I object to the form of the 11 question. Until you complete your hypothetical with 12 the record in this case, it is not proper. Subject 13 to that, you can answer.</p> <p>14 THE WITNESS: The hypothetical is, you 15 want to know how much each pilot is owed? 16 BY MR. TOAL:</p> <p>17 Q Correct.</p> <p>18 A Right. I would say I can think of no 19 objective way, sitting here, to -- to select among 20 the variety of top and bottom staples that would be 21 required to precisely tell you exactly how much the 22 damages to each member of the class are.</p> <p>23 Q And if I was interested in determining 24 accurately the compensation due each member of the 25 class, would you agree that your list, what you</p>	<p style="text-align: right;">101</p> <p>1 Supplement CC has spots reserved at the top of the 2 list for American Airlines pilots.</p> <p>3 A Okay.</p> <p>4 Q Because -- because American Airlines 5 had certain equipment that TWA didn't fly.</p> <p>6 A Okay. Well, again, again, what I'm 7 going to say is I fully expected that my list would 8 be used as a starting point for a status and 9 equipment merge. So if, in fact, at the end of the 10 day, let's say only American was flying, you know, 11 747s and TWA wasn't, I don't know if that's true or 12 not, and only that 747 pilots at the top of the heap 13 would be alone at the top, that would be fine. They 14 are extracted from the list and what's left goes on. 15 It doesn't change the ordering in terms of relative 16 seniority rank within equipment and status. 17 Essentially what the list provides is a framework 18 that gives you a proper accounting of relative 19 seniority rank within status and equipment.</p> <p>20 Q What would you need to do to take your 21 analysis and have it be reflective of an agreement 22 that you think would have been reached between the 23 APA and the TWA MEC?</p> <p>24 A Well, first of all, I didn't have 25 enough information -- we didn't have information</p>
<p style="text-align: right;">100</p> <p>1 present as your best estimate, is not going to 2 achieve that objective?</p> <p>3 A I would -- no. I would disagree with 4 that. It would do a pretty good job.</p> <p>5 Q Now, with respect to pilots at the top 6 of the list, you put TWA pilots at the top of the 7 list even though none of the parties to the 8 negotiation were proposing that; correct?</p> <p>9 A Excuse me? Say this again.</p> <p>10 Q Your list puts TWA pilots at the top of 11 the list even though none of the parties to the 12 negotiation were proposing that that happened; 13 correct?</p> <p>14 A Not at the very top of the list. In 15 fact, as I understand it, Supplement CC has a bottom 16 staple, not a top staple.</p> <p>17 Q Oh, it is your understanding that 18 Supplement CC doesn't have exclusively American 19 Airlines pilots at the top of the list?</p> <p>20 A I would have to -- I would have to read 21 it again. My recollection is that there was -- no, 22 that's right. It was a top staple. I would have to 23 look at it. Let me not speculate on it. We can 24 look at Supplement CC, but --</p> <p>25 Q Well, I will ask you to assume that</p>	<p style="text-align: right;">102</p> <p>1 on -- on status and equipment numbers for the two 2 airlines that would enable us to do a full status 3 and equipment merge, I believe. I think I have a 4 footnote in the paper that suggests that, in the 5 report, rather. So if I had that information, it 6 would be useful to consider that in forming a list 7 that accounted for status and equipment.</p> <p>8 Q And did you ask for that information?</p> <p>9 A I believe so.</p> <p>10 Q And what were you told?</p> <p>11 A I would -- it was David Ashmore who 12 asked for it, and I don't know what he was told.</p> <p>13 Q You didn't ask him what he was told?</p> <p>14 A I said, can we get it? And he said, 15 no, we can't. It is not available. So I don't know 16 why.</p> <p>17 Q And other than -- and if you had status 18 and equipment information, how would you have used 19 that to modify your list?</p> <p>20 A In detail, I can't tell you, because 21 without the information, I didn't put in the time to 22 figure out exactly how I would use it. But in -- in 23 -- in rough terms, I read enough of these 24 arbitration awards to know that there is almost 25 always a distinction between widebody pilots and</p>

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<p style="text-align: right;">103</p> <p>1 narrowbody pilots, and often a distinction between 2 pilots and first officers, and I would then do a 3 more nuanced list that took account of that, which 4 is -- but nonetheless I felt that the list we came 5 up with could be used once that information was 6 available. 7 Q And what other information other than 8 status and equipment information would you need to 9 modify your list to be reflective of an agreement 10 that you think would have been reached between the 11 TWA MEC and the APA? 12 A I would have to think hard but I'd want 13 to think, at least, about the domicile issue in 14 particular. Even Supplement CC built some kind of 15 fence around St. Louis, which is meant to protect, 16 at least a little bit, the TWA pilots, though it is 17 fairly porous. 18 Q What do you mean by fairly porous? 19 A Well, there are situations in which 20 American pilots from outside can, I think the term 21 is, bump and flush TWA pilots out of St. Louis. 22 Q What -- what do you understand those 23 situations to be? 24 A A more -- I don't remember precisely. 25 Q And what's your understanding of how</p>	<p style="text-align: right;">105</p> <p>1 the -- the bottom of this page there is a heading 2 that says St. Louis? 3 A Uh-huh. 4 Q And it says, Supplement CC reserves all 5 B767-200, B767-300, B757 Captain positions in the 6 St. Louis domicile to the TWA pilots, until Morgan 7 Fisher, the last TWA pre-bankruptcy hire, and the 8 last TWA pilot hired before the American furloughs 9 in 1993 has sufficient seniority to hold a small 10 widebody Captain position somewhere in the system. 11 Do you see that? 12 A Uh-huh. Yes. 13 Q Is this consistent with your 14 understanding of how the St. Louis fence was to 15 work? 16 A Yes. 17 Q And do you have any knowledge as to 18 whether any legacy American Airline pilot has ever 19 successfully bid into a Captain position in the 20 St. Louis domicile? 21 A No. 22 Q How would you -- how would you go about 23 conceptually trying to take the St. Louis fence into 24 account in modifying the best estimate seniority 25 integration list that you proposed?</p>
<p style="text-align: right;">104</p> <p>1 the St. Louis fence worked under Supplement CC? 2 A I don't really have a firm 3 understanding. Just enough -- I read enough of it 4 to know that there are cases where, if an American 5 pilot from outside had more seniority and was -- he 6 could bid on a job in -- in St. Louis. But I 7 don't -- I don't have a nuanced understanding of 8 Supplement CC. 9 (Farber-5 TWA pilot seniority 10 integration summary marked for 11 identification.) 12 BY MR. TOAL: 13 Q Let me mark for you as Farber Exhibit-5 14 a -- a TWA pilot seniority integration summary of 15 Supplement CC, dated December 14, 2001, and ask you 16 if you have seen this document before. 17 A You gave me two pieces of paper here? 18 Q The jury verdict, I think, was the 19 exhibit we marked previously. 20 A Oh, okay. That's your copy. Okay. 21 Okay. 22 I don't think I -- okay. I've not seen this 23 before. 24 Q Okay. Let me ask you to direct your 25 attention to page 26 of this document. You see at</p>	<p style="text-align: right;">106</p> <p>1 A As I sit here, I don't know right now. 2 Q Okay. But you haven't done that in 3 your best estimate; correct? 4 A No. I have not. 5 Q Do you have the expertise to do that? 6 A I would have to think -- I would have 7 to first study the problem and see what it involves 8 before I could answer that even. 9 Q So as you sit here today, you can't 10 tell me whether you -- whether or not you have the 11 expertise -- 12 A That's right. 13 Q -- to take the St. Louis fence into 14 account, in -- in -- in determining a -- 15 A I mean, let me say this. I think I -- 16 I think I have the expertise. The question is, do I 17 have the information. 18 Q And what information would you need? 19 A I'm not sure. I would have to study 20 the problem to figure out the information I needed 21 to do that. 22 Q Okay. So as you sit here today, you -- 23 you can't tell me what information you would need in 24 order to factor the St. Louis fence? 25 A That's correct. I could give you a</p>

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<p style="text-align: right;">107</p> <p>1 start on the information, but I couldn't tell you</p> <p>2 all the information.</p> <p>3 <b>Q</b> So as you sit here today, what</p> <p>4 information are you aware of that you would --</p> <p>5 <b>A</b> Well, I certainly would want to know</p> <p>6 the number of planes involved. The -- the -- there</p> <p>7 is also a question of are we asking the question</p> <p>8 prospectively, so that sitting there in</p> <p>9 January 2001, do I want to make a projection of what</p> <p>10 the fence would mean? Or do I want to look</p> <p>11 retrospectively from 2012 and say what did the fence</p> <p>12 mean? Those are two different questions.</p> <p>13 So I would want to know, for example, what do</p> <p>14 I expect flights -- the numbers of planes domiciled</p> <p>15 in St. Louis to be? How many will be small wide</p> <p>16 bodies? How many will be other kinds of planes?</p> <p>17 Interestingly, the language you had me read</p> <p>18 had to do with Captains. In fact, it was that</p> <p>19 portion that I was talking about was talking about</p> <p>20 junior officers. So I would want to know all that</p> <p>21 stuff.</p> <p>22 And, you know, it would also require</p> <p>23 information and opportunities elsewhere in the</p> <p>24 American system to know what it meant for the -- the</p> <p>25 American pilots to be able to not bid or bid into</p>	<p style="text-align: right;">109</p> <p>1 each other; and depending on the order on that list,</p> <p>2 there might be American pilots in the middle there,</p> <p>3 but they are irrelevant, I mean, because they can't</p> <p>4 bid on those planes.</p> <p>5 So I wouldn't have -- I -- I don't -- in doing</p> <p>6 my analysis of the fence, I certainly would have to</p> <p>7 think about how many TWA pilots there were in</p> <p>8 St. Louis, yes.</p> <p>9 <b>Q</b> Well, let -- let me ask you to assume</p> <p>10 that all the legacy TWA pilots are in the St. Louis</p> <p>11 domicile.</p> <p>12 <b>A</b> There is no others.</p> <p>13 <b>Q</b> There are no others.</p> <p>14 <b>A</b> Okay.</p> <p>15 <b>Q</b> And so when they bid, they are only</p> <p>16 bidding against other legacy TWA pilots. Would that</p> <p>17 affect your damage analysis in any way?</p> <p>18 <b>MR. PRESS: I object to the form of the</b></p> <p>19 <b>question.</b></p> <p>20 <b>THE WITNESS: No. No. It -- it</b></p> <p>21 <b>might -- I -- I come up with a list. That's my</b></p> <p>22 <b>damage analysis. It's a list, and the list can be</b></p> <p>23 <b>used if someone wants to take my list and figure out</b></p> <p>24 <b>where people are domiciled, and have a fence, and</b></p> <p>25 <b>specify exactly how the fence works, and play the</b></p>
<p style="text-align: right;">108</p> <p>1 the St. Louis domicile. Things like that.</p> <p>2 <b>Q</b> If -- if it turns out under the</p> <p>3 St. Louis fence that the TWA pilots are competing</p> <p>4 with one another with respect to their -- their</p> <p>5 bids, would that affect your damage analysis in any</p> <p>6 way?</p> <p>7 <b>A</b> If the -- if the -- can you repeat the</p> <p>8 question?</p> <p>9 <b>Q</b> Yeah. If it turns out under the</p> <p>10 St. Louis fence that the legacy TWA pilots who are</p> <p>11 within the St. Louis domicile are effectively</p> <p>12 competing against one another with respect to their</p> <p>13 bids, would that affect your analysis in any way?</p> <p>14 <b>A</b> That's what the seniority list is</p> <p>15 about. That -- that determines the outcome of that</p> <p>16 competition.</p> <p>17 <b>Q</b> Just to be clear, I'm -- I'm saying</p> <p>18 that they are competing only with other legacy TWA</p> <p>19 pilots and not with any legacy American Airlines</p> <p>20 pilots.</p> <p>21 <b>A</b> I understand. That's right. That's</p> <p>22 right. But that's what the seniority list is about.</p> <p>23 There would be a seniority list, and the names on</p> <p>24 the list that would be relevant for those flights</p> <p>25 are the TWA names, and they would be competing with</p>	<p style="text-align: right;">110</p> <p>1 thing out, that could be reflected in someone's use</p> <p>2 of my list.</p> <p>3 <b>BY MR. TOAL:</b></p> <p>4 <b>Q</b> Would you agree that it would affect</p> <p>5 the question of whether TWA pilots actually</p> <p>6 sustained damage during the period that they worked</p> <p>7 at American Airlines?</p> <p>8 <b>MR. PRESS: I object to the form of the</b></p> <p>9 <b>question.</b></p> <p>10 <b>THE WITNESS: I don't know.</b></p> <p>11 <b>BY MR. TOAL:</b></p> <p>12 <b>Q</b> Do you agree that Supplement CC</p> <p>13 maintained the same relative order of TWA pilots as</p> <p>14 had been in place at TWA?</p> <p>15 <b>MR. PRESS: I object to the form of the</b></p> <p>16 <b>question. You are completely mischaracterizing the</b></p> <p>17 <b>record.</b></p> <p>18 <b>THE WITNESS: I don't know.</b></p> <p>19 <b>BY MR. TOAL:</b></p> <p>20 <b>Q</b> You don't know whether Supplement CC</p> <p>21 maintained the same relative order of pilots?</p> <p>22 <b>A</b> I -- I -- I haven't -- I haven't read</p> <p>23 it carefully and I haven't read it recently. And</p> <p>24 this is a -- a summary of it I have not seen before.</p> <p>25 <b>Q</b> If you could take a look at page 27 of</p>

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<p style="text-align: right;">111</p> <p>1 this document. You see the second paragraph on this  2 page says, Supplement CC also reserves the related  3 first officer positions in St. Louis to the TWA  4 pilots, while these small widebody captain and  5 narrowbody captain fences are in effect. This is to  6 assure that the TWA pilots will continue to enjoy  7 some of the quality of life benefits they have in  8 their separate TWA operation despite their placement  9 on the integrated seniority list.</p> <p>10 A Uh-huh. Yes.</p> <p>11 Q Is that consistent with your  12 understanding of how the St. Louis fence worked?</p> <p>13 A I don't really have a clear  14 understanding about the St. Louis -- how the  15 St. Louis fence works. In fact, I would have to  16 read this carefully to get such an understanding.</p> <p>17 Q Do you know whether, when Mr. Salamat  18 took your model, he did anything to account for the  19 impact of the St. Louis fence on the damage figures  20 he calculated?</p> <p>21 A I have no idea.</p> <p>22 Q You agree that before anyone took your  23 model and attempted to quantify damages, that it  24 would be important to take into account the impact  25 of the St. Louis fence and any equipment and status</p>	<p style="text-align: right;">113</p> <p>1 about this. I know we didn't have enough data to do  2 the full analysis. I'm not even sure I had the --  3 had the ranks. That I can't be sure of.</p> <p>4 Q So as you sit here today, can you tell  5 me what you had in mind when you talked about the  6 data on the duties of pilots?</p> <p>7 A Yeah. I wanted to know what the rank  8 was and what kind of aircraft they were assigned to.</p> <p>9 Q And did you ask for that information?</p> <p>10 A I can't be sure. I -- I -- I'm not  11 sure.</p> <p>12 Q And had you had that information, how  13 -- how would that have affected your analysis?</p> <p>14 A Well, it -- it was -- it's a decision.  15 I would of discussed it with the attorneys to decide  16 whether what they wanted from me was a list like  17 they have now, which is essentially just a rank  18 order of seniority, not taking into account status  19 or equipment, or they wanted a more fully nuanced  20 list that broke things out by category, because my  21 professional opinion was that the list I got -- had  22 I had that equipment, I would have started with the  23 same list I've got here, and then I would have then  24 simply extracted like, okay, now we are going to  25 look at wide bodies, so let's just take the subset</p>
<p style="text-align: right;">112</p> <p>1 restrictions?</p> <p>2 A I -- until I do the analysis, I don't  3 know if it would be important or not.</p> <p>4 Q And you haven't done that analysis;  5 correct?</p> <p>6 A That's correct.</p> <p>7 Q Take a look at page 14 of your report,  8 which is Farber-1.</p> <p>9 See the footnote 30 at the bottom. You say, I  10 do not have data on the duties of its pilots. At  11 the time the seniority lists were integrated, as a  12 result, it is not possible for me to allow for this  13 factor in this estimate. Should this information  14 become available, I may adjust my approach to take  15 advantage of these data. Do you see that language?</p> <p>16 A Yes.</p> <p>17 Q And what did you mean when you said you  18 didn't have data on the duties of pilots?</p> <p>19 A I would have to go look at the raw data  20 again, but I believe -- let me see what -- let me  21 see where that footnote is. Hold on.</p> <p>22 Q It's at the bottom of paragraph 39.</p> <p>23 A Uh-huh. I didn't -- I don't have, I  24 don't think, the assignments of the pilots to  25 particular equipment, I believe. I could be wrong</p>	<p style="text-align: right;">114</p> <p>1 of our list, which is widebody Captains, let's say,  2 pull them out in the same order they appear on my  3 master list, and then assign them that way, and then  4 do that with narrowbody Captains, then with widebody  5 first officers and narrowbody first officers.</p> <p>6 So I -- I don't think it would have changed  7 the first part of my analysis, which is to come up  8 with the list, but it would have enabled me to take  9 the analysis further and come up with sub-lists by  10 status and equipment and maybe by domicile, and then  11 that -- that would have been just a further output  12 of my analysis. But I basically took this analysis  13 as far as I was asked to do -- go.</p> <p>14 Q Okay. So we were looking before at  15 paragraph eight of your report where you described  16 what your assignment was. Do you recall that  17 paragraph?</p> <p>18 A I can read it.</p> <p>19 <b>MR. PRESS: Which paragraph?</b>  20 <b>THE WITNESS: Eight.</b>  21 <b>MR. TOAL: Paragraph eight.</b>  22 <b>THE WITNESS: Yes.</b>  23 <b>BY MR. TOAL:</b>  24 Q Okay. So this is where you said you  25 were -- you were looking to generate an estimate of</p>

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<p style="text-align: right;">115</p> <p>1 a merged seniority list that would have resulted</p> <p>2 from a combination of the two airlines had ALPA met</p> <p>3 its duty of fair representation; correct?</p> <p>4 A Yes.</p> <p>5 Q Are you aware of any generally accepted</p> <p>6 economic methodology for doing that?</p> <p>7 A Yes.</p> <p>8 Q And what methodology is that?</p> <p>9 A That's the method I used.</p> <p>10 Q And have you seen proportional</p> <p>11 differences in mean ranks used in any other</p> <p>12 seniority integration dispute?</p> <p>13 A What I meant was that the method is the</p> <p>14 method of finding a comparison group, and -- and</p> <p>15 then comparing what you see with the comparison</p> <p>16 group as a -- as a measure of damages, not -- I've</p> <p>17 -- I've never seen anyone do anything with regard to</p> <p>18 merging of seniority lists.</p> <p>19 Q Just to be clear, so your testimony is</p> <p>20 you've never seen any other expert use proportional</p> <p>21 difference in mean ranks in the context of a</p> <p>22 seniority integration dispute; correct?</p> <p>23 A That's correct.</p> <p>24 Q Have you ever seen any arbitrator in a</p> <p>25 seniority integration dispute rely on proportional</p>	<p style="text-align: right;">117</p> <p>1 dispute.</p> <p>2 A No.</p> <p>3 Q Have you ever seen any peer-reviewed</p> <p>4 research advocating the use of proportional</p> <p>5 difference in mean ranks in the context of</p> <p>6 seniority -- seniority integration disputes?</p> <p>7 A No.</p> <p>8 Q Do you agree that in most seniority</p> <p>9 integration disputes, that the unions in question</p> <p>10 are not able to reach agreement on seniority</p> <p>11 integration?</p> <p>12 A I can't say -- I've not done a count so</p> <p>13 I don't want to say that most but I know that in</p> <p>14 many cases they do not reach agreement.</p> <p>15 Q You haven't done any analysis of how</p> <p>16 frequently the parties reach agreement and how</p> <p>17 frequently they don't?</p> <p>18 A That's correct.</p> <p>19 Q And what's your understanding of the</p> <p>20 role the APA was to play in the process of</p> <p>21 determining the integrated seniority list in this</p> <p>22 case?</p> <p>23 A I consider them just like any other</p> <p>24 union in a -- in a merger acquisition. They're the</p> <p>25 party representing one group of employees on one</p>
<p style="text-align: right;">116</p> <p>1 differences in mean ranks?</p> <p>2 A No.</p> <p>3 Q Have you ever seen an arbitrator in a</p> <p>4 seniority integration dispute even take that factor</p> <p>5 into consideration in any way?</p> <p>6 A Yes.</p> <p>7 Q And in which arbitration?</p> <p>8 A I don't -- my -- my yes answer doesn't</p> <p>9 mean they are looking at literally the proportional</p> <p>10 difference in mean ranks, but many arbitrators --</p> <p>11 several -- more than a few times you see</p> <p>12 arbitrators, when they are evaluating the proposal</p> <p>13 of one side or the other, say that it -- the</p> <p>14 proposal of one side or the other would result in a</p> <p>15 serious disparity in placement on the list between</p> <p>16 the two airlines.</p> <p>17 And, indeed, in most arbitrations, the</p> <p>18 positions of the two parties result in a big</p> <p>19 difference in average placement on the list. And</p> <p>20 all I did was simply figure out a summary way to</p> <p>21 quantify that difference.</p> <p>22 Q So my question is more specific about</p> <p>23 whether you've ever seen any arbitrator actually</p> <p>24 calculate and use proportional difference in mean</p> <p>25 ranks in the context of the seniority integration</p>	<p style="text-align: right;">118</p> <p>1 side.</p> <p>2 Q Did you undertake any analysis to</p> <p>3 determine whether the best estimate list that you</p> <p>4 propose would have preserved the pre-transaction</p> <p>5 career expectations of the American Airlines pilots?</p> <p>6 A No.</p> <p>7 Q And you may have answered this --</p> <p>8 A Can I -- can I -- can I amend that</p> <p>9 answer?</p> <p>10 Q Yeah.</p> <p>11 A Okay. I took no direct consideration</p> <p>12 of career expectations, but by choosing a list of</p> <p>13 comparables in a particular way, what that does is</p> <p>14 that that results in a list that's, again,</p> <p>15 comparable to what would have happened with fair</p> <p>16 representation, and presumably those other</p> <p>17 arbitrations took account of career expectations, so</p> <p>18 I would expect to get something quite reasonable in</p> <p>19 the way of career expectations out of my list.</p> <p>20 Q Okay. But my question was specific to</p> <p>21 this particular case and whether you undertook any</p> <p>22 analysis to determine whether the best estimate list</p> <p>23 that you propose would have preserved the</p> <p>24 pre-transaction career expectations of the American</p> <p>25 Airlines pilots.</p>

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<p style="text-align: right;">119</p> <p>1 A No.</p> <p>2 Q Are you -- as part of your work in this</p> <p>3 case, are you offering an expert opinion that the</p> <p>4 APA would, in fact, have agreed to the best estimate</p> <p>5 list that you proposed?</p> <p>6 MR. PRESS: It's been asked and</p> <p>7 answered.</p> <p>8 THE WITNESS: No.</p> <p>9 BY MR. TOAL:</p> <p>10 Q Do you have an understanding of whether</p> <p>11 the APA had the right to insist under its collective</p> <p>12 bargaining agreement that all of the TWA pilots get</p> <p>13 stapled to the bottom of the list?</p> <p>14 A I believe so, yeah.</p> <p>15 Q You believe they did have that ability?</p> <p>16 A I believe that it was in their</p> <p>17 contract. That's different from having the ability.</p> <p>18 Q Okay. So you believe the APA had the</p> <p>19 right under their contract to insist that all of the</p> <p>20 TWA pilots be stapled to the bottom of the list;</p> <p>21 correct?</p> <p>22 A I -- I believe so, yeah.</p> <p>23 Q And what did you try to do in this case</p> <p>24 to understand the APA's position regarding seniority</p> <p>25 integration?</p>	<p style="text-align: right;">121</p> <p>1 rhetoric. In a negotiation, either party is just</p> <p>2 making bargaining rhetoric. And they were claiming</p> <p>3 that TWA's financial position was quite dire, and</p> <p>4 they were imminently going to cease operation,</p> <p>5 and -- it is a -- it is a self-serving statement.</p> <p>6 It was in their interest to make such a statement.</p> <p>7 Q Whether it is self-serving or not, what</p> <p>8 basis, if any, do you have for opining on whether it</p> <p>9 represented APA's true views?</p> <p>10 A I have no basis. I don't know what</p> <p>11 their true views were.</p> <p>12 Q You do recall, at least from the</p> <p>13 materials that you reviewed, that the APA at least</p> <p>14 was expressing the view that TWA was in dire</p> <p>15 financial condition and was on the verge of not</p> <p>16 flying; correct?</p> <p>17 A On the verge of declaring bankruptcy,</p> <p>18 yeah.</p> <p>19 Q In your prior answer you said that they</p> <p>20 were claiming TWA's position was quite dire and they</p> <p>21 were imminently going to cease operations. Do you</p> <p>22 recall saying that statement?</p> <p>23 A That was a misstatement. I believe --</p> <p>24 I -- I -- I would have to -- let me say this. I</p> <p>25 would have to go back and look at the APA's</p>
<p style="text-align: right;">120</p> <p>1 A I read -- I simply, as -- as you said,</p> <p>2 I read their contract provision. I read a little</p> <p>3 bit about the offers, and a few of the offers and</p> <p>4 counteroffers that went back and forth. That's as</p> <p>5 far as I went.</p> <p>6 Q And what -- what information did you</p> <p>7 derive about the APA's views on seniority</p> <p>8 integration from the materials that you reviewed?</p> <p>9 A They weren't giving up much.</p> <p>10 Q Do you have any more specific</p> <p>11 recollection about what their position was?</p> <p>12 A No, no.</p> <p>13 Q Do you have any recollection of what</p> <p>14 their rationale was for the positions they were</p> <p>15 taking?</p> <p>16 A No.</p> <p>17 Q And do you recall from those materials</p> <p>18 that you reviewed, what the APA's view of TWA's</p> <p>19 financial condition was at the time of the American</p> <p>20 Airlines transaction?</p> <p>21 A Let -- let me just preface my answer by</p> <p>22 saying, whatever the APA said and whatever, frankly,</p> <p>23 ALPA would say, at that stage, it is all bargaining</p> <p>24 rhetoric. And whatever APA's bargaining rhetoric</p> <p>25 was, TWA was in dire bargaining -- dire bargaining</p>	<p style="text-align: right;">122</p> <p>1 statements. But I believe it talked more about</p> <p>2 bankruptcy than ceasing flying, but I could be</p> <p>3 wrong. I -- I -- I honestly -- you're asking me --</p> <p>4 I should probably answer less effusively. I should</p> <p>5 say I don't remember exactly what the APA said.</p> <p>6 Q And would it be important to your</p> <p>7 analysis to get an understanding of what the APA's</p> <p>8 actual views were concerning TWA's financial</p> <p>9 condition?</p> <p>10 A No.</p> <p>11 Q Given that the APA would have to agree</p> <p>12 to any negotiated result, why wouldn't that be</p> <p>13 important to your analysis?</p> <p>14 A I -- I don't see why the APA would have</p> <p>15 particularly valid information about TWA's financial</p> <p>16 situation.</p> <p>17 Q Whether they had valid information or</p> <p>18 not, I'm asking whether their views, their beliefs</p> <p>19 concerning TWA's financial condition would be</p> <p>20 important to your analysis.</p> <p>21 A No. We're -- no.</p> <p>22 Q If the APA had the committed, but even</p> <p>23 mistaken view, that TWA was on the verge of ceasing</p> <p>24 operations, would you expect that to affect their</p> <p>25 negotiating position?</p>

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<p style="text-align: right;">123</p> <p>1 A APA's negotiating position?</p> <p>2 Q Yes.</p> <p>3 A Maybe.</p> <p>4 Q So why wouldn't it be important to take</p> <p>5 into account the APA's views concerning TWA's</p> <p>6 financial condition?</p> <p>7 A Because if -- if -- if ALPA were</p> <p>8 adequately representing the pilots of TWA, this</p> <p>9 would come out in negotiation. Either ALPA, with</p> <p>10 the proper information, would convince the APA and</p> <p>11 they would reach an agreement, or there wouldn't be</p> <p>12 a merger, or there would be some other way that --</p> <p>13 another way for it -- another way forward. Again,</p> <p>14 all -- I'm doing something very straightforward. I</p> <p>15 -- I simply say, here is what happened in similar</p> <p>16 cases that should have happened here. That's all.</p> <p>17 Q Well, isn't -- isn't one of the</p> <p>18 questions whether the cases that you relied upon are</p> <p>19 actually similar or not?</p> <p>20 A Well, on average, they are similar.</p> <p>21 Q Well, you determined that they were</p> <p>22 similar because of --</p> <p>23 A Yes.</p> <p>24 Q -- because of a judgment you made about</p> <p>25 the financial condition of the airlines, the</p>	<p style="text-align: right;">125</p> <p>1 whether TWA was expected to stop flying imminently?</p> <p>2 A I read -- as I was reading the record,</p> <p>3 which was sort of the history, more of the history</p> <p>4 of the case and the history of the bankruptcy, and I</p> <p>5 read -- in particular, I read one paper. It's cited</p> <p>6 here. I can find -- would you like me to find you</p> <p>7 the reference?</p> <p>8 Q Is it the paper by a professor at the</p> <p>9 Tuck Business School?</p> <p>10 A Exactly. Who -- who -- who argued, for</p> <p>11 example -- you know, a key future for me was there</p> <p>12 were other suitors besides American Airlines who</p> <p>13 would have provided debtor-in-possession financing</p> <p>14 and kept the airline operating. As a result, I</p> <p>15 didn't think their shutdown was imminent.</p> <p>16 Q And which other suitors are you</p> <p>17 referring to?</p> <p>18 A Carl Ichan.</p> <p>19 Q Any others?</p> <p>20 A Carl Ichan, I-C-H-A-N.</p> <p>21 I would have to look at the paper again.</p> <p>22 That's one -- his is a name that sticks with me.</p> <p>23 Q Is that the only one you can recall as</p> <p>24 you sit here?</p> <p>25 A Yes. And they were also -- I believe</p>
<p style="text-align: right;">124</p> <p>1 acquired airlines that you included in your sample;</p> <p>2 correct?</p> <p>3 A Correct.</p> <p>4 Q And if you made a different judgment,</p> <p>5 and were more pessimistic about the financial</p> <p>6 prospects of TWA, you might have put together a</p> <p>7 different set of comparables; correct?</p> <p>8 A That's correct.</p> <p>9 Q Did you do any -- any independent</p> <p>10 analysis of TWA's financial condition at the time of</p> <p>11 this transaction?</p> <p>12 <b>MR. PRESS: Didn't we just go through</b></p> <p>13 <b>this? It's been asked and answered.</b></p> <p>14 <b>THE WITNESS: I read statements -- I</b></p> <p>15 <b>read some material. They were flying. They were</b></p> <p>16 <b>flying in full -- and -- you know, I -- did I do any</b></p> <p>17 <b>independent analysis? No, I did not go and look at</b></p> <p>18 <b>bankruptcy filings or any of that.</b></p> <p>19 <b>BY MR. TOAL:</b></p> <p>20 Q But your criteria is not just whether</p> <p>21 the acquired airline happened to be flying at the</p> <p>22 time. You also talked about whether it was going to</p> <p>23 stop flying imminently; correct?</p> <p>24 A Yes.</p> <p>25 Q So what steps did you take to determine</p>	<p style="text-align: right;">126</p> <p>1 they had equipment that was worth something, and</p> <p>2 there were other sources of financing that they</p> <p>3 perhaps could have pursued internally, if I recall</p> <p>4 correctly. But, again, I don't have it memorized.</p> <p>5 Q When were you first retained in this</p> <p>6 matter?</p> <p>7 A I don't actually know, remember.</p> <p>8 Q What's your best recollection?</p> <p>9 A Must be sometime in the last two years.</p> <p>10 Certainly not within the last eight months or nine</p> <p>11 months, but sometime between ten months ago and two</p> <p>12 years ago. I just don't -- honest to God, I just</p> <p>13 don't remember. I think it must have been early</p> <p>14 last year.</p> <p>15 Q Early 2012?</p> <p>16 A Could be. It might be in 2011.</p> <p>17 Perhaps my attorneys -- the attorneys for TWA can</p> <p>18 help you out with that.</p> <p>19 Q And how much have you been paid so far</p> <p>20 in connection with this assignment?</p> <p>21 A I don't know.</p> <p>22 Q Do you have a reasonable estimate you</p> <p>23 can make?</p> <p>24 A Well, as I said, I think you asked me</p> <p>25 earlier if I've -- if I've worked -- if I take away</p>

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<p style="text-align: right;">127</p> <p>1 what I worked now, maybe I got paid for three days.  2 So probably -- I probably -- I might have gotten  3 paid \$20,000.  4 Q How much?  5 A \$20,000 maybe. I don't know.  6 Q And how much have Ashenfelter &amp; Ashmore  7 been paid?  8 A I have no idea. 20,000, by the way, is  9 only -- is only the grossest estimate. I -- I  10 honestly --  11 Q Did you do anything to prepare for this  12 deposition?  13 A Yes.  14 Q What did you do?  15 A I reread my report, both at the  16 beginning of preparation and at the end of  17 preparation. And in between, I took a look at core  18 materials including the things like the -- many --  19 not many, but a number of the arbitration awards,  20 particularly the ones -- at -- the ones related to  21 the comparison group. I read some other documents  22 that I thought were important -- I thought were  23 interesting and important including the article by  24 the guy at the Tuck School, Dartmouth. The -- I  25 tried to read Supplement CC, but I didn't have a</p>	<p style="text-align: right;">129</p> <p>1 Q -- instruct you to make any  2 assumptions?  3 A Yes.  4 Q And which assumptions did they direct  5 you to make?  6 A They directed me to make the assumption  7 that ALPA had breached its duty of fair  8 representation, as that had been found by a court of  9 law.  10 Q Anything else?  11 A No. Not that I can recall here.  12 Q Were you asked to make any assumptions  13 about TWA's financial condition?  14 A No.  15 Q Were you asked to make any assumptions  16 about the likelihood that TWA would cease flying in  17 the absence of a transaction with American Airlines?  18 A No.  19 Q Were you asked to make any assumptions  20 about the premerger career expectations of TWA  21 pilots?  22 A No.  23 Q And in putting together your list, did  24 you pay attention to the pre-transaction career  25 expectations of the TWA pilots?</p>
<p style="text-align: right;">128</p> <p>1 nice summary like you have here. Things like that.  2 Plus I spent a half a day with -- with the attorneys  3 talking about what the deposition might be about.  4 Q And when was that meeting?  5 A Last Thursday.  6 Q Did you meet in person?  7 A Yes.  8 Q And who was present at that meeting?  9 A The two attorneys here, me, and David  10 Ashmore. Oh, and -- I'm blanking on her name.  11 Q Another attorney?  12 A Another attorney. Don't tell her I  13 forgot her name. I'm terrible at that.  14 Q It is going to be in the transcript  15 now.  16 A What's that?  17 Q It's going to be in the transcript.  18 A I know, I know, I know. I'm so bad at  19 that.  20 Q Were -- were you provided with any  21 assumptions on which to base your analysis?  22 A No. Meaning the preparation?  23 Q No. In the -- in the course of your  24 analysis at all, did plaintiff's counsel --  25 A Yes, yes.</p>	<p style="text-align: right;">130</p> <p>1 A Say that -- please repeat that.  2 Q In your work on this assignment, did  3 you pay attention to the pre-transaction career  4 expectations of the TWA pilots?  5 A No.  6 Q And did you pay attention to the  7 premerger career expectations of the American  8 Airlines pilots in constructing your list?  9 A No.  10 Q Did you make any assumptions in your  11 work about the value of TWA's assets to American  12 Airlines?  13 A No assumptions. I drew conclusions.  14 Q And what conclusions did you draw?  15 A That TWA brought assets that had real  16 value to the transaction. That was one of the  17 criterion I used -- one of the criterion I used to  18 find comparables.  19 Q And what do you mean by real value?  20 A I mean something that American was  21 willing to pay for.  22 Q And isn't that the case in any of these  23 transactions that there is always something that the  24 acquiring airline is willing to pay for?  25 A Well, the question is, is it</p>

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<p style="text-align: right;">131</p> <p>1 substantial, and there was -- I relied here on a</p> <p>2 presentation by American which outlined the -- the</p> <p>3 assets that TWA was going to bring to the -- to the</p> <p>4 merger.</p> <p>5 Q And did you identify any transactions</p> <p>6 in which you felt the acquiring -- the acquired</p> <p>7 airline was not bringing assets of substantial value</p> <p>8 to the transaction?</p> <p>9 A I believe there were some.</p> <p>10 Q And which ones can you recall?</p> <p>11 A I don't recall which ones they were,</p> <p>12 but that a reason -- that would be a reason for it</p> <p>13 not to be included as a comparable transaction.</p> <p>14 Q Did you do any analysis of what the</p> <p>15 value, in fact, was to American Airlines of TWA's</p> <p>16 assets?</p> <p>17 A No.</p> <p>18 Q Did you develop any metric to assess</p> <p>19 the value of the assets that the acquired airline</p> <p>20 was bringing to a merger?</p> <p>21 A No.</p> <p>22 Q Do you have the expertise to do that?</p> <p>23 A That depends on the nature of the</p> <p>24 asset.</p> <p>25 Q With respect to which assets would you</p>	<p style="text-align: right;">133</p> <p>1 you are asking me?</p> <p>2 Q Did you make any assessment?</p> <p>3 A An assessment, no.</p> <p>4 Q Would that have been relevant to your</p> <p>5 analysis, what the bargaining leverage of each side</p> <p>6 was?</p> <p>7 A Well, the -- the -- the -- the</p> <p>8 situation was tainted by the fact that ALPA shirked</p> <p>9 its duty of fair representation, so that what I</p> <p>10 observed as the bargaining leverage would not be an</p> <p>11 indication of something that would exist absent that</p> <p>12 bad behavior.</p> <p>13 Q Did you try to make any assessment of</p> <p>14 what bargaining leverage TWA, the TWA MEC would have</p> <p>15 had relative to the APA in the absence of any breach</p> <p>16 by ALPA?</p> <p>17 A Yes.</p> <p>18 Q And what -- how did you go about</p> <p>19 conducting that assessment?</p> <p>20 A That was simply my -- my analysis. My</p> <p>21 analysis showed that the TWA pilots would have done</p> <p>22 much better on a merged list. That's an assessment</p> <p>23 of relative bargaining power.</p> <p>24 Q So -- and my -- my question is really</p> <p>25 focused on, not the outcome of the negotiations, but</p>
<p style="text-align: right;">132</p> <p>1 be able to assess the value of what the acquired</p> <p>2 airline is bringing to the table?</p> <p>3 A Well, for example, if they own</p> <p>4 equipment of particular types, there is a market for</p> <p>5 equipment and I can value the equipment at market</p> <p>6 value. To the extent there is markets in slots at</p> <p>7 particular airports, that's a little harder, then I</p> <p>8 begin to need someone with more expertise in the</p> <p>9 airline industry to tell me what TWA's gates at JFK</p> <p>10 were worth, for example, or what, if there are in a</p> <p>11 dominant position in St. Louis, was worth. That</p> <p>12 sort of thing.</p> <p>13 Q And you didn't undertake any efforts to</p> <p>14 actually do that in this case; correct?</p> <p>15 A No. I -- my -- my -- it was -- I did</p> <p>16 not quantify those. That's correct.</p> <p>17 Q Were you asked to make any assumptions</p> <p>18 about what leverage TWA had in the negotiations</p> <p>19 concerning seniority integration?</p> <p>20 A No.</p> <p>21 Q Did you make any assessment of the</p> <p>22 leverage that TWA -- the TWA MEC had on the one hand</p> <p>23 and the APA had on the other hand in the</p> <p>24 negotiations concerning seniority integration?</p> <p>25 A Did I -- did I make any assumptions,</p>	<p style="text-align: right;">134</p> <p>1 whether you did any assessment of the bargaining</p> <p>2 leverage that each side had in the negotiations</p> <p>3 absent any breach by ALPA.</p> <p>4 A No.</p> <p>5 Q In paragraph three of your report, page</p> <p>6 two, you say, at the time of the purchase, referring</p> <p>7 to the American Airline asset purchase, TWA was weak</p> <p>8 financially, but was still flying planes and entered</p> <p>9 bankruptcy as a condition of its deal with American.</p> <p>10 Do you see that?</p> <p>11 A Yes.</p> <p>12 Q Do you know whether American -- whether</p> <p>13 -- withdrawn.</p> <p>14 Do you know whether TWA would have entered</p> <p>15 bankruptcy in the absence of any deal by American</p> <p>16 Airlines?</p> <p>17 A No.</p> <p>18 Q Would that be relevant to your</p> <p>19 analysis?</p> <p>20 A No.</p> <p>21 Q Why not?</p> <p>22 A Because what I was interested in was</p> <p>23 whether TWA would continue to fly and not whether</p> <p>24 they were -- whether they were bankrupt or not, had</p> <p>25 filed for bankruptcy or not.</p>

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<p style="text-align: right;">135</p> <p>1 Q And other than -- any information you 2 had concerning proposals by Carl Ichan, did you do 3 anything else to determine whether TWA would have 4 been in a position to keep flying absent the 5 American transaction? 6 A All I -- I read that article by the 7 economist at Tuck who argued that there were other 8 sources of cash for TWA, as well, and -- 9 Q Anything other than that? 10 A No. 11 Q And do you have the expertise to 12 determine whether an airline is likely to cease 13 flying within any given period of time? 14 A If I put my mind to it, I'm sure I 15 could do that. 16 Q And how would you do it? 17 A I don't know. I would have to put my 18 mind to it. 19 I would have to, you know, look at their 20 financial situation, you know, what their cash flow 21 looked like, what their revenues, fixed expenses, 22 and so on, projections for -- for passengers. It is 23 not something I have ever done. It would take me a 24 very long time to do, but you just asked me if I had 25 the expertise to do it, and, essentially, what I'm</p>	<p style="text-align: right;">137</p> <p>1 bankruptcy auction. Had American not been there, 2 there was another purchaser who presumably would 3 have bought the assets. The airline would have 4 flown and pilots kept their jobs. 5 Q So my question is whether you are able 6 to offer an expert opinion as to what would've 7 happened to the TWA pilots in the absence of a 8 transaction with American Airlines. 9 A No. I'm relying on others' -- others' 10 views of that. That's correct. 11 Q Whose views? 12 A Well, the views of that -- you know, 13 I'm basically -- as I read it, I don't know if I 14 want to call it -- quite call it an expert opinion, 15 but I concluded, reading what I read, that TWA 16 looked to me like they would -- likely going to fly, 17 and I based that on the fact that there were other 18 sources of cash for them that the fellow from Tuck 19 talked about, and that there were other suitors in 20 the bankruptcy. 21 Q And so what I'm asking is whether you 22 are in a position to offer an expert opinion as to 23 what would have happened to the TWA pilots in the 24 absence of the American transaction. 25 <b>MR. PRESS: I object to the form.</b></p>
<p style="text-align: right;">136</p> <p>1 saying is I could develop the expertise to do that. 2 Q As you sit here today -- 3 A I don't not have the expertise, sitting 4 here. 5 Q What would be sufficient to persuade 6 you that, absent an American Airlines transaction, 7 that TWA was likely to cease operations? 8 A Soon. 9 Q Soon. 10 A I don't know. 11 Q Are you offering any opinion here about 12 what would have happened to TWA in the absence of a 13 transaction with American Airlines? 14 A No. 15 Q And are you offering any opinion about 16 what would have happened to the TWA pilots in the 17 absence of a transaction with American Airlines? 18 A No. 19 Q Are you able to offer any opinion about 20 whether, in the absence of a transaction with 21 American Airlines, the TWA pilots would have been 22 able to maintain their jobs as pilots? 23 A I'm assuming in my analysis that TWA 24 would continue to fly. I'm -- as I read -- as I 25 read the material, what I saw was that there was a</p>	<p style="text-align: right;">138</p> <p>1 <b>that's been asked twice and he's answered it twice,</b> 2 <b>the same way.</b> 3 <b>THE WITNESS: The same answer that I</b> 4 <b>said --</b> 5 <b>BY MR. TOAL:</b> 6 Q Well, I -- your answer was that you 7 read an article by a professor at the Tuck School. 8 A Right. 9 Q Does that give you a sufficient basis 10 to express an opinion as to what would have happened 11 to the TWA pilots in the absence of the American 12 transaction? 13 A I'm not -- I wasn't considering -- I 14 was asked to opine on something very simple, which 15 is had ALPA performed its duty of fair 16 representation, what would the merged seniority list 17 have looked like? Now, implicit in that, I don't 18 take a stand one way or the other on the -- what 19 would have happened to the TWA pilots had the 20 American transaction not gone through. 21 Q So you are not offering an expert 22 opinion on that subject? 23 A I'm not offering an opinion on that. 24 That's correct. 25 Q If -- if it were determined that the</p>

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<p style="text-align: right;">139</p> <p>1 likelihood was that TWA would have liquidated 2 shortly after January 2001 in the absence of an 3 American transaction, would that have affected your 4 analysis? 5 A Yes. 6 Q In what way? 7 A I would have had to select my 8 comparables differently. 9 Q And you are aware that the transactions 10 you categorized as having an acquired airline that 11 was either not flying or was about to stop flying 12 had proportional differences in mean rank of about 13 minus .6; correct? 14 A I don't know. I haven't done that 15 grouping. You asked me that before. I don't know. 16 Q Look at page -- page two of your 17 report. Paragraph five. 18 You say, seniority is an important factor in a 19 pilot's career. It influences his or her home base, 20 his or her role in the cabin (captain/first 21 officer), et cetera. The routes and schedules he or 22 she flies, the type of aircraft the pilot flies, and 23 also the order in which layoffs or furloughs occur. 24 Thus, a pilot's relative position on the seniority 25 list is a central determinate of the pilot's</p>	<p style="text-align: right;">141</p> <p>1 between seniority and income levels for the pilot 2 population in this case? 3 A No. 4 Q Do you have an understanding about 5 whether there is a difference between the pay rates 6 for TWA pilots and the pay rates for American 7 Airlines pilots? 8 A I have no idea. 9 Q Did you see in your review of 10 arbitration decisions that that was a factor that 11 arbitrators took into consideration in assessing 12 seniority integration? 13 A Took what into consideration? 14 Q Differences in pay rates between the 15 acquired and acquiring airline. 16 A Sometimes. I saw that sometimes. 17 Q And how -- how is that factor taken 18 into consideration when it was? 19 A It might be a factor for -- for shading 20 the -- the integration one way or the other. It was 21 usually just mentioned. It was seldom one of the -- 22 I can't remember if it was ever a determining 23 factor, how the integration was done. 24 Q And your analysis does not take into 25 account whether there are differences in pay rates</p>
<p style="text-align: right;">140</p> <p>1 earnings. Do you see that? 2 A Yes. 3 Q What are the other determinates of a 4 pilot's earnings? 5 MR. PRESS: Really? Object to the form 6 of the question as being over broad. 7 THE WITNESS: Well, their preferences 8 will affect their earnings. What airline they work 9 for will affect their earnings, just for an example. 10 BY MR. TOAL: 11 Q Are you aware of any determinates of 12 pilot earnings? 13 MR. PRESS: Same objection. 14 THE WITNESS: Conditional on their 15 being a pilot already, working for a particular 16 airline, basically their preferences are going to 17 determine what routes they choose to bid for, what 18 equipment they choose to bid for will be -- taken 19 together; that pretty much determines it. 20 BY MR. TOAL: 21 Q What about the number of hours they 22 choose to work? 23 A That's part of choosing, what they 24 choose to bid for. That's what I meant, yes. 25 Q Have you assessed the relationship</p>	<p style="text-align: right;">142</p> <p>1 between the TWA and the American pilots; correct? 2 A That's correct. 3 Q Isn't that a component of 4 pre-transaction career expectations? 5 A Pre -- 6 Q Pre-transaction career expectations? 7 A I would imagine. 8 Q Did -- did you see in your review of 9 arbitration decisions that arbitrators universally 10 focus on preserving the pre-transaction career 11 expectations of both pilot groups? 12 A Yes. 13 Q And your -- your list was constructed 14 without regard to that factor; correct? 15 A As I said, it is without direct regard 16 for it, but it is implicit in the method I use. 17 Q Paragraph 25 of your report, page nine. 18 You say at the bottom, with the assistance of 19 my staff, I've reviewed information on 41 seniority 20 list mergers. These include 29 arbitration 21 decisions, 11 amendments to CBAs, and one reported 22 federal decision. Do you see that? 23 A Yes. 24 Q And you list all those mergers in 25 appendix B to your report; correct?</p>

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<p style="text-align: right;">143</p> <p>1 A Yes.</p> <p>2 Q Are these all the transactions between</p> <p>3 airlines to which you had information on seniority</p> <p>4 integration?</p> <p>5 A This is -- this -- yes. I believe</p> <p>6 that's correct.</p> <p>7 Q Did you have a temporal cutoff for</p> <p>8 your -- for your analysis?</p> <p>9 A Not that I recall.</p> <p>10 Q If you take a look at Mr. Salamat's</p> <p>11 report, which is Farber Exhibit-2 --</p> <p>12 A Yeah.</p> <p>13 Q You go to page 21 of that report.</p> <p>14 You see he also has a list of</p> <p>15 post-deregulation mergers?</p> <p>16 A Okay.</p> <p>17 Q Do you know why there are differences</p> <p>18 between your list of transactions and his?</p> <p>19 A No.</p> <p>20 Q Now, in your analysis that you describe</p> <p>21 in paragraph 25, how much consideration did you give</p> <p>22 to the 11 instances in which there were amendments</p> <p>23 to collective bargaining agreements related to</p> <p>24 seniority integration?</p> <p>25 A How much consideration did I give?</p>	<p style="text-align: right;">145</p> <p>1 value to the merger.</p> <p>2 So if I had that -- those pieces -- those two</p> <p>3 pieces of information plus enough information to</p> <p>4 calculate the mean rank difference, they would be</p> <p>5 included in table one. Otherwise, they would not.</p> <p>6 Q And in that answer about whether the</p> <p>7 airline brought value, did you mean to say the</p> <p>8 acquired airline brought value to the transaction?</p> <p>9 A Yes. The acquired. Did I say</p> <p>10 acquiring?</p> <p>11 Q I think so.</p> <p>12 A Okay. I'm sorry. The acquired</p> <p>13 airline, yeah.</p> <p>14 Q So for any of the 41 transactions that</p> <p>15 you considered, if it doesn't appear on table one,</p> <p>16 that's because you lacked information about one of</p> <p>17 these three categories that you just mentioned?</p> <p>18 A That's correct.</p> <p>19 Q Is there any other reason why a</p> <p>20 transaction would be missing from list one?</p> <p>21 A As I sit here, not that I'm aware of.</p> <p>22 Q Okay. Now, information about the</p> <p>23 financial condition of the airline would be</p> <p>24 something that would be publicly available; correct?</p> <p>25 A Could be.</p>
<p style="text-align: right;">144</p> <p>1 Q Yeah.</p> <p>2 A I -- fundamentally, I considered each</p> <p>3 -- each case on its own merits.</p> <p>4 Q On your table one --</p> <p>5 A Yes.</p> <p>6 Q -- you include, I think it is 19</p> <p>7 transactions.</p> <p>8 A Yes. Uh-huh.</p> <p>9 Q So why out of the 41 transactions you</p> <p>10 considered does your chart contain only 19?</p> <p>11 A It's because in -- in order to make it</p> <p>12 into table one, I had to be able to calculate the</p> <p>13 mean rank difference, which referred that there be</p> <p>14 sufficient -- two considerations.</p> <p>15 Number one, I had to be able to calculate mean</p> <p>16 rank difference, and many of the documents we saw</p> <p>17 for cases didn't include enough information on the</p> <p>18 merged seniority list to be able to calculate that.</p> <p>19 Number two, I had to be able to figure out</p> <p>20 whether -- what the airline's financial condition</p> <p>21 was at some -- I -- I agree rather than perfunctory</p> <p>22 level. But, nonetheless, I had to be --</p> <p>23 characterize the financial condition of the airline.</p> <p>24 And number two, I had to be able to have some</p> <p>25 indication of whether the acquiring airline brought</p>	<p style="text-align: right;">146</p> <p>1 Q And in any of the cases where you were</p> <p>2 missing financial information concerning the</p> <p>3 condition of the acquired airline pre-transaction,</p> <p>4 did you make any effort to acquire that information</p> <p>5 from publicly available sources?</p> <p>6 A I want -- I want -- I want to say I</p> <p>7 believe we did. It wasn't just -- I mean, the fact</p> <p>8 that they are losing money is not what I'm</p> <p>9 interested in. I'm interested in the prospects for</p> <p>10 -- for continuing to fly. So it was a little more</p> <p>11 complicated than saying, yes, I can look at their</p> <p>12 profit and loss statement. I want to say we did</p> <p>13 some work on that. We tended to rely a lot on,</p> <p>14 particularly in the arbitration reports, on the</p> <p>15 arbitrator's reasoning, which is -- and there is</p> <p>16 clearly a lot less information in the amendments to</p> <p>17 collective bargaining agreements which don't give</p> <p>18 reasoning. Right? They just tell you what they</p> <p>19 decided. But do I believe we did some work. Like,</p> <p>20 for example, in Delta/Pan Am, which is not an</p> <p>21 arbitration but is a -- I think it is an amendment</p> <p>22 to a collective bargaining agreement. In that</p> <p>23 particular case, we had to go outside to find some</p> <p>24 of the other information.</p> <p>25 Q And the way you went outside was</p>

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<p style="text-align: right;">147</p> <p>1 referring to two newspaper articles concerning that 2 transaction?</p> <p>3 A Yeah. Public sources.</p> <p>4 Q Did you do anything else?</p> <p>5 A No.</p> <p>6 Q And other than that particular example, 7 is there anything else you did to try and get 8 financial information?</p> <p>9 A Well, there might have -- there might 10 have been other cases where we did that. I just -- 11 I didn't do that work myself. So as I sit here now, 12 I can't tell you which cases we had to go outside 13 the basic document to get information.</p> <p>14 Q And with respect to any value that the 15 acquired airline was bringing to the transaction, 16 did you explore whether that was information that 17 could have been obtained from publicly available 18 sources?</p> <p>19 A No. That was -- that's a good 20 question. I think -- I have -- I have a memory in 21 one case of one of my guys coming to me and saying, 22 look, look what they are doing. And that was fine. 23 So there was obviously some searching going on for 24 that. But my -- my best recollection is that in 25 almost every case where we saw whether there was</p>	<p style="text-align: right;">149</p> <p>1 than arbitrated sounds like it wouldn't have made a 2 difference to your analysis as long as you could get 3 information concerning the financial condition of 4 the acquired carrier and the value of the assets 5 they brought to the transaction; is that correct?</p> <p>6 A Yes.</p> <p>7 Q So even when you didn't have 8 information concerning the financial condition of 9 the acquired carrier or the value of the assets they 10 brought to the transaction, but you had information 11 that allowed you to calculate the proportional 12 difference in mean ranks, did you make that 13 calculation?</p> <p>14 A I don't think we made calculations of 15 proportional difference in mean ranks for anybody 16 who is not on this list.</p> <p>17 Q Are you aware of transactions in which 18 the acquired -- pilots of the acquired airline got 19 stapled to the bottom of the seniority list?</p> <p>20 A I think there was one transaction we 21 saw like that.</p> <p>22 Q Which transaction was that?</p> <p>23 A It might have been one of the ones 24 involving Licks or Lynx. Lynx. It was an airline 25 that was grounded, wasn't flying, had only regional</p>
<p style="text-align: right;">148</p> <p>1 value or not, it was internal to the report. It was 2 a statement, for example, by an arbitrator that 3 said, you know, airline B is bringing, you know, 4 good equipment and gates at important airports.</p> <p>5 Q So for the transactions that don't 6 appear on table one, did you exhaust efforts to 7 obtain information about the financial condition of 8 the acquired airline and the value of assets they 9 brought to the transaction from publicly available 10 sources?</p> <p>11 A Exhaust efforts is pretty extreme. We 12 made some efforts. Whether we made exhaustive 13 efforts, I'm not -- I'm not going to claim that.</p> <p>14 Q Did you make efforts with respect to 15 each of the transactions for which you had 16 information that would allow you to calculate the 17 difference in means, did you make efforts for each 18 of those to assess the financial condition of the 19 airline and the value of the assets it brought to 20 the transaction from publicly available sources?</p> <p>21 A I believe so, yes.</p> <p>22 Q And who would know more about that?</p> <p>23 A David Ashmore.</p> <p>24 Q And your analysis of the fact that a 25 seniority integration resolution was agreed rather</p>	<p style="text-align: right;">150</p> <p>1 planes, et cetera. I don't remember which one it 2 was.</p> <p>3 Q So on the list put together by 4 Mr. Salamat on page 21 of his report, you see 5 reference to the American/Reno transaction?</p> <p>6 A Yes.</p> <p>7 Q Did you do any investigation into the 8 circumstances of seniority integration in the 9 American/Reno transaction?</p> <p>10 A I would have to look and see. I don't 11 even know if it is on our list of 41 transactions. 12 In other words -- in other words, it is quite likely 13 we never heard -- we never found that one. It is 14 simply because it doesn't look like it was an 15 arbitration, and we -- I don't see any document.</p> <p>16 Q You testified that you weren't 17 confining your analysis to arbitrations; correct?</p> <p>18 A That's true, and we tried to find as 19 many of these as we could, which I never -- I hope I 20 never represented that we found them all, and we 21 certainly never selected them on any systematic 22 basis in the sense of, oh, we'll look for the ones 23 that are favorable or something. I don't -- I just 24 don't think we found that one.</p> <p>25 Q Do you have a list somewhere of what</p>

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<p style="text-align: right;">151</p> <p>1 the 41 transactions you considered are?</p> <p>2 A Unless it is somewhere in the backup --</p> <p>3 I -- I -- there may not be -- is it in the appendix</p> <p>4 here? Probably not, right?</p> <p>5 Q There is a list of --</p> <p>6 A -- of arbitration reports.</p> <p>7 Q -- agreements.</p> <p>8 A Arbitration awards and agreements,</p> <p>9 right? You know, to be honest, I would have to</p> <p>10 check to see whether we have a document like that.</p> <p>11 Q Okay. But for purposes of determining</p> <p>12 the 41 transactions that you considered as part of</p> <p>13 your universe, we should try and extract that</p> <p>14 information from Exhibit B; correct?</p> <p>15 A There is also backup materials that you</p> <p>16 were provided, right, and it could be in there in a</p> <p>17 file. But I'm sure, if you would like such a list,</p> <p>18 we can get that to you if you don't have it, if you</p> <p>19 can't find it here. It is an oversight on our part.</p> <p>20 It should be in there.</p> <p>21 Q You say in page -- paragraph 26 of your</p> <p>22 report -- you say, arbitration decisions are a</p> <p>23 particularly rich source of data for estimating the</p> <p>24 but-for seniority list because, unlike amendments to</p> <p>25 CBAs, arbitrators provide a written report</p>	<p style="text-align: right;">153</p> <p>1 reasonably sized positive proportional mean</p> <p>2 difference.</p> <p>3 So the question is, why would that be? And it</p> <p>4 turns out, when you look at it, that Frontier was</p> <p>5 flying big airplanes and Republic was basically</p> <p>6 flying little regional jets, and it was unusual that</p> <p>7 a -- a regional airline like that was acquiring,</p> <p>8 essentially, a trunk carrier, or a regional trunk</p> <p>9 carrier anyway, flying bigger planes.</p> <p>10 And as a result, because of the status in the</p> <p>11 equipment business, the Frontier guys got put near</p> <p>12 the top of the list and wound up better. So we</p> <p>13 tried to consider -- you know, but most -- most of</p> <p>14 the -- almost all of the mergers, all of the</p> <p>15 acquisitions, I should call it, the acquired airline</p> <p>16 was subsidiary in some way. Subsidiary is the wrong</p> <p>17 word. Small -- I will call it smaller in some way.</p> <p>18 There is another example here which is Texas</p> <p>19 Air/Continental. Texas International/Continental is</p> <p>20 another example, which is quite interesting because</p> <p>21 Continental is much bigger. This is -- I -- I guess</p> <p>22 it must be -- Frank Lorenzo, right? You know, he is</p> <p>23 an ambitious guy with this little airline in Texas,</p> <p>24 and God dammit, he is going to buy Continental,</p> <p>25 right? So he looks at that, and -- so that -- but</p>
<p style="text-align: right;">152</p> <p>1 describing the results of their deliberations,</p> <p>2 including an account of the reasons for their</p> <p>3 decision. Do you see that?</p> <p>4 A Yes.</p> <p>5 Q But the only factors that you consider</p> <p>6 in your analysis are whether the acquired airline</p> <p>7 was not flying, or would shortly stop flying, and</p> <p>8 whether it brought substantial assets -- assets of</p> <p>9 substantial value to the transaction; correct?</p> <p>10 A Yes, correct.</p> <p>11 Q Now, the arbitrators themselves</p> <p>12 actually consider a host of other factors; correct?</p> <p>13 A Yes.</p> <p>14 Q And did you attempt to take any of</p> <p>15 those other factors into consideration in</p> <p>16 constructing your list?</p> <p>17 A In general, no.</p> <p>18 Q And specifically?</p> <p>19 A And specifically, there was at least</p> <p>20 one case where -- in fact, it is on -- I think it is</p> <p>21 in table one. If we go to table one.</p> <p>22 Republic/Frontier, which is -- it's -- I think it's</p> <p>23 -- it is an unusual one because it gives a huge</p> <p>24 advantage to the acquired airline's pilots. Do you</p> <p>25 see that? In other words, it is the only one with a</p>	<p style="text-align: right;">154</p> <p>1 that, nonetheless, wound up not so good for</p> <p>2 Continental. They had a lot of people stapled at</p> <p>3 the bottom.</p> <p>4 So we tried to consider a lot -- a lot -- this</p> <p>5 is a long answer to the question, did we ever</p> <p>6 consider anything else? The answer is, we read</p> <p>7 these carefully. We tried to understand what was</p> <p>8 going on. Ultimately, in the -- because the</p> <p>9 analysis is a small numbers problem and we wanted to</p> <p>10 try to find a reasonable sized set of matched</p> <p>11 transactions, you can't do that on too many -- in</p> <p>12 too many dimensions or else you won't get any</p> <p>13 matches.</p> <p>14 And what you have to do is pick the most</p> <p>15 salient pieces -- portions which we felt was</p> <p>16 financial viability, essentially flight viability</p> <p>17 and value, and say, let's focus on those. And, on</p> <p>18 average, take the average of those, and the other</p> <p>19 things will average out. Some of them will be a</p> <p>20 little better on some things and worse on other</p> <p>21 things.</p> <p>22 So I don't know if that's responsive to your</p> <p>23 question, but that's what I have to say.</p> <p>24 Q So my question is, within the construct</p> <p>25 of your -- your model and your alternative seniority</p>

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<p style="text-align: right;">155</p> <p>1 list, did you make any efforts to take into account 2 any other --</p> <p>3 A Oh, in a formal modeling sense?</p> <p>4 Q Yeah.</p> <p>5 A No. I guess I could have shortened 6 that answer somewhat.</p> <p>7 Q And when you go through -- you go 8 through your list, which is generally sorted by the 9 proportional difference in mean ranks; correct?</p> <p>10 A Yes.</p> <p>11 Q With one exception it looks like, at 12 the bottom -- toward the bottom of the list, the 13 American/TWA transaction actually looks like it's -- 14 it's out of order based on this table. Do you see 15 that?</p> <p>16 A Yes. Why is that?</p> <p>17 Q Do you know why that is?</p> <p>18 A It is either a typo in -- in the .627 19 or just a misordering in the list. One or the 20 other. I honestly -- if someone has a calculator, I 21 can redo the calculation, but it's -- I don't have 22 an explanation for that. I am happy to find out.</p> <p>23 Q In any event, when you go through this 24 list in rank order, the situations in which you felt 25 that the mean rank was different than you would have</p>	<p style="text-align: right;">157</p> <p>1 this is not typical of mergers in general, it set up 2 a flag for it. So, you know, the Republic/ 3 Frontier -- you know, Republic/Frontier/Midwest/ 4 Lynx deal was just different from any of the others.</p> <p>5 Q Well, do you acknowledge that there are 6 factors other than the financial condition of the 7 acquired airline and the value of the assets it 8 brings to the transaction that can influence the 9 seniority integration process?</p> <p>10 A Yes.</p> <p>11 Q And what other factors would you 12 acknowledge could influence that process other than 13 those two?</p> <p>14 A It could be many things. The skill of 15 the negotiators. Those are -- you know, there -- 16 there are things, you know, again as we talked about 17 that's implicit. And the way I put things together 18 is career expectations of -- of the people. Those 19 are -- you know, the things that are most, you know, 20 there is -- there is the criterion -- well, it's 21 actually not characteristic of a merger, trying to 22 preserve seniority rank within a company and so on.</p> <p>23 The issue of -- of -- of equipment status and 24 domicile, how those stack up. Particularly 25 equipment differences are often very important in</p>
<p style="text-align: right;">156</p> <p>1 expected, and you tried to learn more about the 2 underlying transaction; correct?</p> <p>3 A Well, you know, frankly, we only really 4 did that at the end of the day for the one at the 5 very top of the list and the one at the very bottom 6 of the list partly because that Republic merger is 7 an odd one because it involved four airlines. It 8 was really one merger. And they merged four 9 seniority lists.</p> <p>10 And -- so there were three airlines acquired 11 by Republic. This was -- and it had a single 12 seniority merger, which is Lynx, Midwest, and 13 Frontier. This is, I guess, what they called the 14 second Frontier. There were two Frontier Airlines. 15 So we always -- we always considered that 16 transaction quite gingerly because it is so, so 17 different from the rest of them. And as a result, 18 at the end of the day, it is interesting that that 19 yielded both the top number on the list and the 20 bottom number on the list, and we are not going to 21 use those for anything.</p> <p>22 So, really, it was -- it wasn't so much that 23 we were looking if a number looked wrong. That 24 wasn't what we did. What we did is, as we were 25 reading the cases, if something struck us and said,</p>	<p style="text-align: right;">158</p> <p>1 mergers of lists, which is how, for example, the 2 Frontier, the Republic/Frontier wound up the way it 3 did. That's an equipment issue really, equipment 4 and route issue. So there are other things, sure.</p> <p>5 Q Did you ever try running a proportional 6 difference in mean rank for the American Airline/TWA 7 transaction excluding the American Airline pilots at 8 the top of the list who were flying a category of 9 equipment that TWA didn't have?</p> <p>10 A No. Interesting idea, though.</p> <p>11 Q Is that something that you think would 12 make sense to do?</p> <p>13 A Not in isolation, no. I would have 14 to -- I would have to look at all these. You can't 15 just cherrypick one observation and do that.</p> <p>16 Q Do you think it would make sense to do 17 that globally?</p> <p>18 A Given the purposes of my analysis, no. 19 Because again, my analysis comes up with an overall 20 list. And then imagine that you wanted to use it, 21 and then you took my list and used it to create 22 status and equipment specific lists. That would 23 automatically take account of this because as soon 24 as you look at the equipment, you'd have a list that 25 only had American pilots in it, and then you would</p>

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<p style="text-align: right;">159</p> <p>1 get to the rest.</p> <p>2 Q But if that next step hasn't happened</p> <p>3 with your analysis, you don't know from any of your</p> <p>4 comparables whether any of those included status and</p> <p>5 equipment restrictions; do you?</p> <p>6 A I -- I couldn't tell you which do and</p> <p>7 which didn't, as I'm sitting here.</p> <p>8 Q And you didn't differentiate on the</p> <p>9 basis of whether any transactions in your comparable</p> <p>10 list had status and equipment restrictions; correct?</p> <p>11 A No. No. We just used a list as it was</p> <p>12 developed.</p> <p>13 Q Now, would you acknowledge that</p> <p>14 arbitration and negotiation are -- are very</p> <p>15 different processes?</p> <p>16 A Yes.</p> <p>17 Q And do you have any reason to expect</p> <p>18 that the results of an arbitrated seniority</p> <p>19 integration would be predictive of the results of a</p> <p>20 negotiated seniority integration?</p> <p>21 A Yes.</p> <p>22 Q What reason do you have?</p> <p>23 A I've written on this. I've published</p> <p>24 papers, actually, on the question of the</p> <p>25 relationship between arbitration and negotiation.</p>	<p style="text-align: right;">161</p> <p>1 cases. And that's how they get rehired in other</p> <p>2 cases.</p> <p>3 There is a -- there is a long literature --</p> <p>4 not a long literature -- there's a literature, sort</p> <p>5 of a boutique literature on this. And as a result,</p> <p>6 what's interesting is then, in a world where you</p> <p>7 have arbitration as the dominant dispute resolution</p> <p>8 mechanism, the negotiated outcomes and the</p> <p>9 arbitrated outcomes tend to look very similar.</p> <p>10 Q Well, the -- the literature on this</p> <p>11 subject acknowledges that there are difference</p> <p>12 between -- differences between negotiated results</p> <p>13 and arbitrated results; correct?</p> <p>14 A No.</p> <p>15 Q Isn't it influenced by things like risk</p> <p>16 aversion of the parties?</p> <p>17 A Well, okay. Yes. If the parties are</p> <p>18 differentially risk averse, you are quoting my work</p> <p>19 back to me, then you would see that, on average, the</p> <p>20 negotiated settlements would be a little bit to one</p> <p>21 side of the arbitrated settlements one way or the</p> <p>22 other. But the arbitration is still the focal</p> <p>23 point. When you are dealing with two groups of</p> <p>24 pilots, they pretty much have similar preferences.</p> <p>25 They are not -- one side is not more risks averse</p>
<p style="text-align: right;">160</p> <p>1 And the -- the causality runs in both directions.</p> <p>2 First of all, negotiators in a world where the</p> <p>3 dispute is going to be decided by -- could be</p> <p>4 decided by arbitration if they don't agree, the</p> <p>5 arbitration becomes a focal point in the</p> <p>6 negotiation, and they negotiate to the -- to the</p> <p>7 expected arbitration award. It's -- in your terms,</p> <p>8 arbitration is just like litigation, just like civil</p> <p>9 litigation. Two parties are bargaining. If they</p> <p>10 don't agree, they go to a trial and either a judge</p> <p>11 or a jury decides. So when you are doing pretrial</p> <p>12 settlement negotiations, you are thinking about what</p> <p>13 will happen if we go to trial? The -- the</p> <p>14 negotiators are thinking, what will happen if we go</p> <p>15 to arbitration? Okay?</p> <p>16 On the other side of the coin, this isn't like</p> <p>17 judges now. This is now in arbitration. The</p> <p>18 arbitrators are professionals. What's their goal?</p> <p>19 Their goal is to get rehired in the next case.</p> <p>20 They are going to get rehired in the next case, if</p> <p>21 what they do this time is perceived as reasonable,</p> <p>22 fair and equitable to both sides. So they are</p> <p>23 trying to cut a middle ground and do something that</p> <p>24 doesn't alienate one side or the other, so they do</p> <p>25 the best job they can to do that, on average, across</p>	<p style="text-align: right;">162</p> <p>1 than the other, and I'm going to expect, in fact,</p> <p>2 that the negotiated agreements are going -- you</p> <p>3 know, they are going -- they are going to understand</p> <p>4 that if we don't agree here, an arbitrator is going</p> <p>5 to come in -- probably come in and decide for us,</p> <p>6 and that really does limit how much each side can</p> <p>7 push its own agenda.</p> <p>8 Q And what about a negotiation where</p> <p>9 there is no right to compel arbitration? Do you</p> <p>10 acknowledge that the results of negotiations in that</p> <p>11 context would be expected to differ from the results</p> <p>12 in arbitrations?</p> <p>13 A Well, you have to ask -- to understand</p> <p>14 any negotiation, you have to ask what will happen if</p> <p>15 you fail to agree. If you put me back in your God</p> <p>16 scenario where one side gets to impose what they</p> <p>17 want, sure. Okay? But if you now say it is just</p> <p>18 going to be two guys duking it out and the last one</p> <p>19 standing gets more of what they want than the other,</p> <p>20 it becomes a much more -- so that, the analogue is</p> <p>21 that if you don't have arbitration, what do you</p> <p>22 have? A strike? Does one group of pilots stop</p> <p>23 flying? I don't really understand -- I don't</p> <p>24 understand the leverage that pilots have if there is</p> <p>25 no arbitration one way or the other.</p>

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<p style="text-align: right;">163</p> <p>1 Q Well, in this particular situation, one</p> <p>2 of the alternatives would be, there would be no</p> <p>3 transaction.</p> <p>4 A Okay.</p> <p>5 Q So in a situation where you don't have</p> <p>6 a right to arbitration, there is a negotiation, and</p> <p>7 the options are, you can either agree to something</p> <p>8 in the negotiation, the APA in the absence of an</p> <p>9 agreement can negotiate with American Airlines and</p> <p>10 implement a list, or there can be no transaction.</p> <p>11 Would you expect the results in that sort of setting</p> <p>12 to differ from the results in arbitrated --</p> <p>13 arbitrated resolutions --</p> <p>14 A It could.</p> <p>15 Q -- of seniority integration?</p> <p>16 A It could. It could. But what I expect</p> <p>17 here is that, assuming ALPA did its job, that there</p> <p>18 would be a negotiation that, frankly, at the end of</p> <p>19 the day, might well have at least a threat of an</p> <p>20 arbitration at the end of the road.</p> <p>21 Q Okay. So that's an assumption that you</p> <p>22 made in your analysis; correct?</p> <p>23 A I'm -- I'm just answering your question</p> <p>24 as to what I expect in a case. You know, if we were</p> <p>25 sure there was no arbitration available, in a sense,</p>	<p style="text-align: right;">165</p> <p>1 VIDEO SPECIALIST: The time is now 2:37</p> <p>2 and we are back on the video record.</p> <p>3 (Farber-6 Document from Tuck Business</p> <p>4 School regarding TWA merger marked for</p> <p>5 identification.)</p> <p>6 BY MR. TOAL:</p> <p>7 Q Mr. Farber, I'm going to hand you a</p> <p>8 document I marked as Farber Exhibit-6.</p> <p>9 Can you let me know if this is a document that</p> <p>10 you've seen before?</p> <p>11 A I don't think I've seen it in this</p> <p>12 version, but -- yeah.</p> <p>13 Q Is this the document you referenced</p> <p>14 previously in your testimony about the commentary of</p> <p>15 a professor at the Tuck School of Business</p> <p>16 concerning the TWA merger?</p> <p>17 A I have to -- I remember what I read as</p> <p>18 being slightly longer than this, which is the only</p> <p>19 reason I'm hesitating. I --</p> <p>20 Q Let me direct your attention to</p> <p>21 footnote 39 in your expert report, which is Farber</p> <p>22 Exhibit-1.</p> <p>23 A What page is that on?</p> <p>24 Q Page 19.</p> <p>25 A Okay.</p>
<p style="text-align: right;">164</p> <p>1 all bets are off. Okay? But, fundamentally, you</p> <p>2 know, the question of what's fair and reasonable is</p> <p>3 implemented -- is -- is -- how do I want to put</p> <p>4 this -- is -- is revealed by the large array of</p> <p>5 negotiated settlements and arbitration awards that</p> <p>6 we see out there.</p> <p>7 Q Did you analyze the particular</p> <p>8 transactions that you looked at to see whether there</p> <p>9 is a difference in the proportional mean ranks</p> <p>10 between transactions that were negotiated and</p> <p>11 transactions that were arbitrated?</p> <p>12 A Almost all the ones we have here are</p> <p>13 arbitrated. I don't have enough negotiated. In</p> <p>14 fact, the only one on the list that might be</p> <p>15 negotiated is Delta/Pan Am, yeah, at minus .1.</p> <p>16 Yeah, so there is not enough data to do that.</p> <p>17 Q You didn't have enough data to do that?</p> <p>18 A Yes.</p> <p>19 VIDEO SPECIALIST: Dan, I have ten</p> <p>20 minutes left before I have to flip the tape.</p> <p>21 MR. TOAL: Why don't we go off the</p> <p>22 record?</p> <p>23 VIDEO SPECIALIST: The time is now 1:35</p> <p>24 and this ends this number two.</p> <p>25 (Luncheon recess.)</p>	<p style="text-align: right;">166</p> <p>1 Q Do you see the internet link located in</p> <p>2 footnote 39?</p> <p>3 A Yeah. It looks like the same thing.</p> <p>4 You know what? I think what happened was, I went --</p> <p>5 I went to this link and I clicked on a -- somewhere</p> <p>6 there was a link on this page and said get the PDF,</p> <p>7 and I got the PDF. Must be the same thing.</p> <p>8 Q Okay.</p> <p>9 A Yeah.</p> <p>10 Q Okay. And how did this commentary</p> <p>11 affect your analysis?</p> <p>12 A Well, I -- I found it very interesting</p> <p>13 that, along with, you know, this was -- the -- the</p> <p>14 main thing I found interesting was that there --</p> <p>15 there was another offer for, in bankruptcy, another</p> <p>16 bid, and -- and I think there was -- hold on. It</p> <p>17 also -- later on, you know, later on you see the Jet</p> <p>18 Acquisitions Group, Ralph Atkins was willing to</p> <p>19 offer \$889 million in cash. So, you know, that --</p> <p>20 that was a good part of it in here.</p> <p>21 I -- I believe I saw, you know, somewhere I</p> <p>22 read, and I don't know that I read it here, but that</p> <p>23 an awful lot of what they owed -- owed was to Boeing</p> <p>24 and aircraft leasing, and that they were working</p> <p>25 with Boeing to try to restructure the payments on</p>

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<p style="text-align: right;">167</p> <p>1 that. I don't remember where. I can go back and</p> <p>2 look. I remember seeing something like that. And</p> <p>3 it just sort of reinforced the view that TWA had</p> <p>4 options.</p> <p>5 Q Have you analyzed whether any proposal</p> <p>6 by Carl Ichan had contingencies attached to them?</p> <p>7 A No, I have not. I did not do any --</p> <p>8 any further investigation of the nature of the</p> <p>9 offer.</p> <p>10 Q And do you know if it was a firm --</p> <p>11 firm offer to buy substantially all of TWA's assets?</p> <p>12 A I don't know. No.</p> <p>13 Q Do you know anything about the terms of</p> <p>14 the offer?</p> <p>15 A No.</p> <p>16 Q And with respect to the TWA -- TWA</p> <p>17 Acquisitions Group, do you have any information</p> <p>18 concerning any offer by that group?</p> <p>19 A Say that again, please.</p> <p>20 Q Do you have any information concerning</p> <p>21 any offer by the group known as the TWA Acquisitions</p> <p>22 Group?</p> <p>23 A I don't know what the TWA Acquisitions</p> <p>24 Group is.</p> <p>25 Q Okay. It is referenced at the bottom</p>	<p style="text-align: right;">169</p> <p>1 of all, they were obviously in negotiation with</p> <p>2 American. They were also in negotiation with other</p> <p>3 creditors. They -- to me -- as I remember reading</p> <p>4 the record, they, you know, they had aircraft on</p> <p>5 order. They were not furloughing employees. In</p> <p>6 fact, I think if you look at the seniority list,</p> <p>7 they hired some employees quite recently. It -- it</p> <p>8 wasn't the typical situation, I thought, of an</p> <p>9 airline that was just about to just -- see, they had</p> <p>10 options. That's my -- I read this. They were in</p> <p>11 negotiation with American. It was in the heat of</p> <p>12 the negotiation that there was this discussion of</p> <p>13 the arbitration clause and the TWA contract. It</p> <p>14 wasn't at all clear to me that that was actually</p> <p>15 going to kill the agreement. I didn't know one way</p> <p>16 or the other.</p> <p>17 And as a result, you know, I'm simply, you</p> <p>18 know, to me, filing for bankruptcy is a way to get</p> <p>19 protection and -- from your creditors, and</p> <p>20 ultimately airlines that file for bankruptcy, most</p> <p>21 of the airlines we fly every day have been in</p> <p>22 bankruptcy at one point or another it seems to me,</p> <p>23 and they don't stop flying. So I didn't really take</p> <p>24 very seriously that TWA was just going to stop</p> <p>25 flying. Maybe that's not enough --</p>
<p style="text-align: right;">168</p> <p>1 of page two of this commentary.</p> <p>2 A Okay, now. Can you repeat your</p> <p>3 question?</p> <p>4 Q I will withdraw the question.</p> <p>5 Do you see under the heading on page two, the</p> <p>6 TWA auction?</p> <p>7 A Yes.</p> <p>8 Q The second sentence in that paragraph</p> <p>9 says, at that time TWA had less than 20 million to</p> <p>10 cover lease payments of 150 million that were due</p> <p>11 the following week.</p> <p>12 A Yes.</p> <p>13 Q Were you aware of that information at</p> <p>14 the time you prepared your report?</p> <p>15 A Yes.</p> <p>16 Q And did that factor into your analysis?</p> <p>17 A No.</p> <p>18 Q Do you think that had any bearing on</p> <p>19 whether TWA would be forced to stop flying in the</p> <p>20 near future absent a deal with American Airlines?</p> <p>21 A I did not consider it seriously that</p> <p>22 TWA would stop flying immediately at that -- at that</p> <p>23 point.</p> <p>24 Q Why didn't you seriously consider that?</p> <p>25 A Well, first, you know -- I mean, first</p>	<p style="text-align: right;">170</p> <p>1 Q You see the top of page three, the</p> <p>2 first full paragraph, last sentence says, Judge</p> <p>3 Walsh had earlier stated that he didn't see a</p> <p>4 realistic prospect of a successful reorganization of</p> <p>5 TWA on its own, and characterized the 1.1 billion</p> <p>6 offer as a joke, referring to the offer made by the</p> <p>7 TWA Acquisitions Group. Do you see that language?</p> <p>8 A Yes, yes.</p> <p>9 Q Were you aware of that at the time that</p> <p>10 you drafted your report?</p> <p>11 A I had read this article.</p> <p>12 Q And so, did -- did the judge's view</p> <p>13 about the offer from the TWA Acquisition Group as a</p> <p>14 joke have any bearing upon your analysis?</p> <p>15 A No.</p> <p>16 Q Did it have any bearing on whether you</p> <p>17 thought that TWA had options other than the</p> <p>18 transaction with American Airlines?</p> <p>19 A No.</p> <p>20 Q Why not?</p> <p>21 A Well, as -- I'm -- I'm not sure why the</p> <p>22 judge chose to speak out like that. He may have</p> <p>23 been defending himself because he didn't accept the</p> <p>24 highest bid. And it may -- whether -- but the point</p> <p>25 is I don't think -- I wasn't predicated my view on</p>

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<p style="text-align: right;">171</p> <p>1 the idea that if the American buyout didn't turn 2 out, that Ichan would buy the airline. That wasn't 3 my only -- as I said, there were other routes, 4 renegotiation of payments with creditors and so on. 5 It -- it -- so I, you know, I went with the 6 view that American Airlines was flying a full 7 schedule, they were not laying off workers, they 8 were buying planes. Yes, they owed a lot of money 9 and their cash flow didn't look great, but it looked 10 like, to me, that they were going to continue to 11 fly. So -- 12 Q Do you have any information about where 13 TWA would have gotten the additional money that it 14 needed to stay in business absent the American 15 Airlines transaction? 16 A No. 17 Q And can you say, as you sit here today, 18 one way or the other, whether any other proposal 19 would have come to fruition with regard to financing 20 for TWA? 21 A Not specifically, no. 22 Q And can you say generally whether any 23 of those proposals would have come to fruition? 24 A No. 25 Q You say at paragraph 24 of your report,</p>	<p style="text-align: right;">173</p> <p>1 evidence in this case supporting that statement? 2 A No. Document or evidence? The only 3 document is that, in fact, TWA had an arbitration 4 clause in its contract with ALPA, and that they were 5 persuaded by ALPA to let that go. And my view is 6 had ALPA behaved differently, perhaps they wouldn't 7 have let that go, and perhaps then it would have 8 been decided by arbitration, the APA clause 9 notwithstanding. 10 Q And my question is, can you point to 11 any documents or other evidence in this case 12 supporting the notion that the APA would have agreed 13 to arbitration of seniority integration? 14 A No. 15 Q Okay. In your prior answer, I think 16 you said TWA had an arbitration clause in its 17 contract with ALPA. Did you mean to say that TWA 18 had an arbitration -- that the TWA pilots had an 19 arbitration clause in their collective bargaining 20 agreement with TWA? 21 A ALPA -- the pilots of TWA, as I 22 understand it, represented by ALPA, had a contract 23 with TWA, and I believe this is -- you know, 24 essentially, that was what TWA pilots were asked to 25 -- to waive for the arbitration to go forward. I'm</p>
<p style="text-align: right;">172</p> <p>1 which is on page nine, you say, arbitration awards 2 regarding mergers of seniority lists and other 3 airline combinations are relevant sources of 4 information for at least two reasons. First, it is 5 possible that had ALPA met its duty of 6 representation of the TWA pilots, the merger of the 7 TWA and American seniority lists would have been 8 decided through arbitration. Do you see that? 9 A Yes. 10 Q Now, what was your basis for making 11 that statement? 12 A Simply because in many, many cases 13 where the pilots are negotiating over merger of 14 seniority lists, the result is decided through 15 arbitration. 16 Q Can you point to any document or 17 evidence in this case supporting your statement that 18 if ALPA had met its duty of fair representation, 19 that the merger of the TWA and American seniority 20 lists would have been decided through arbitration? 21 A I didn't say it would have been. I 22 said it might have been. 23 Q Well, you said it is possible that -- 24 A It is possible that, right. 25 Q So can you point to any document or</p>	<p style="text-align: right;">174</p> <p>1 not a hundred percent sure exactly where that clause 2 sat, but that's what I was referring to. 3 Q Of the transactions that you identified 4 as comparables on your list, did you investigate 5 whether in any of those cases the acquired -- the 6 pilots of the acquired airline had either waived any 7 right to arbitration or never had a right to 8 arbitration to begin with? 9 A No. 10 Q And would you agree that if the 11 decision of the TWA pilots to waive arbitration of 12 seniority integration is not attributable to any 13 breach of a duty of fair representation by ALPA, 14 that the unavailability of arbitration could have 15 affected the anticipated results in any negotiation 16 between the APA and the TWA MEC? 17 A Wow. I -- can you repeat the question? 18 Q Yeah. You've testified previously 19 that, I believe, but correct me if I'm wrong, that 20 if there were no right to arbitration, that the 21 results of an arbitration concerning seniority 22 integration might not be predictive of the results 23 of a negotiation; is that correct? 24 A Half correct. 25 Q What part is correct?</p>

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<p style="text-align: right;">175</p> <p>1       A    Well, what's true -- you know, what's 2 true is, you know, what -- what matters ultimately 3 is the economic -- is the environment that they are 4 negotiating in. And what matters is, you know, 5 essentially, what the arbitrators are trying to do 6 is -- is, in effect, come up with a fair and 7 equitable outcome that presumably reflects what the 8 parties might agree to on their own. So I still 9 think that the arbitration awards do contain 10 information on -- on what would happen given the 11 economic environment relative to financial 12 condition, bringing value and so on. So, you know, 13 I think that's the correct portion.</p> <p>14       What's true is the formal model I described to 15 you before where, in fact, the arbitration is out 16 there as the hammer and it's going to fall in a 17 certain place, and that the parties know where it is 18 going to fall so it focuses their negotiation, if 19 there isn't going to be arbitration, that's not 20 going to really -- not going to hold. That's true.</p> <p>21       Q    So would you agree that if there is a 22 negotiation with no right to arbitration, that the 23 results of arbitration decisions concerning 24 seniority integration would not be predictive of the 25 results of negotiations in that particular context?</p>	<p style="text-align: right;">177</p> <p>1   different from the results of arbitrated decisions?</p> <p>2       A    No.</p> <p>3       Q    Do you have the ability to conduct that 4 analysis?</p> <p>5       A    No. I don't have the data, is what I 6 mean. If that -- if data translates to ability, 7 then I don't have the ability.</p> <p>8       Q    Are you aware that arbitration of 9 seniority integration disputes was required where 10 both pilot groups were represented by the same 11 union?</p> <p>12       A    I realize -- I realize that ALPA has a 13 merger policy that if they are both represented by 14 ALPA, that they go -- that it suggests they go to 15 arbitration.</p> <p>16       Q    And of the transactions that you 17 identified as comparables, do you know how many of 18 those transactions were between two unions that were 19 both represented by ALPA?</p> <p>20       A    No.</p> <p>21       Q    Would that make a difference to your 22 analysis?</p> <p>23       A    No.</p> <p>24       Q    And you testified previously that you 25 -- you've not considered any testimony that was</p>
<p style="text-align: right;">176</p> <p>1       A    But it might tell you something about 2 what a fairly represented -- two fairly represented 3 groups would agree on in a negotiation.</p> <p>4       Q    So -- but just as to my question, would 5 you agree that the results of arbitrations are not 6 predictive --</p> <p>7       A    Yeah, I'm disagreeing with your 8 statement. I'm saying it would have some predictive 9 value in any case because the arbitrations 10 necessarily tell you -- not necessarily, but what 11 they imply is what two reasonably represented 12 parties could expect to negotiate. And whether -- 13 and even if the negotiation's not there, you have 14 two reasonably represented parties.</p> <p>15       In other words, it's already been found that 16 ALPA shirked their duty of fair representation, and 17 the question is what effect did that have? And what 18 I'm saying is, it looks like an awful like what -- I 19 learn it through arbitrations mainly, but what 20 happens in similar situations. And by similar 21 situations, similar economic situations.</p> <p>22       Q    And have you undertaken any analysis to 23 determine if negotiations where there's no right to 24 arbitration produce results regarding seniority 25 integration, even according to your metric, that are</p>	<p style="text-align: right;">178</p> <p>1   offered in the context of this -- this suit; 2 correct?</p> <p>3       A    That's correct. I don't believe so. 4 There might be some short pieces of testimony in the 5 backup that we looked at, but I don't recall 6 specifically. I think I read a couple of closing 7 statements.</p> <p>8       Q    Do you know who John Darrah is?</p> <p>9       A    No.</p> <p>10       <b>MR. TOAL: D-A-R-R-A-H.</b> 11       <b>(Farber-7 Deposition transcript of</b> 12       <b>John Darrah marked for identification.)</b> 13       <b>BY MR. TOAL:</b> 14       Q    Okay. Mr. Darrah was the president of 15 the APA at the time of the American transaction. 16 I'm going to mark as Farber Exhibit-7, a copy 17 of his deposition in this case. 18 If I could direct your attention to page 45 of 19 this testimony. 20       A    Page 45? 21       Q    Yeah. 22       <b>MR. PRESS: This is what?</b> 23       <b>MS. RODRIGUEZ: 7.</b> 24       <b>MR. PRESS: ALPA-7.</b> 25       <b>BY MR. TOAL:</b></p>

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<p style="text-align: right;">179</p> <p>1 Q Okay. And do you see in this testimony</p> <p>2 starting at line eight at page 45, the question is,</p> <p>3 okay. You see in the third paragraph of this</p> <p>4 proposed memorandum of agreement, Mr. Wilder is</p> <p>5 proposing binding arbitration if there is no</p> <p>6 agreement reached after 30 days of mediation</p> <p>7 concerning seniority integration? And the answer</p> <p>8 is, yes, sir. Do you see that?</p> <p>9 A Yes.</p> <p>10 Q Okay. Do you know who Mr. Wilder is?</p> <p>11 A No.</p> <p>12 Q Okay. Mr. Wilder was counsel</p> <p>13 representing the TWA MEC.</p> <p>14 A Okay.</p> <p>15 Q And the next question says, was the APA</p> <p>16 amenable to binding arbitration in the event that,</p> <p>17 that the APA and the TWA MEC were unable to reach an</p> <p>18 agreement on seniority integration? And the answer</p> <p>19 is, no, sir, absolutely not. And the question is,</p> <p>20 why not? And the answer is, they would never agree</p> <p>21 to arbitration on a seniority list. The question</p> <p>22 is, the APA would never? And the answer is, no.</p> <p>23 And the question is, why? And the answer is,</p> <p>24 because we own the seniority list.</p> <p>25 And then I ask, what do you mean by that, that</p>	<p style="text-align: right;">181</p> <p>1 A No.</p> <p>2 Q Why not?</p> <p>3 A I already knew these facts. I already</p> <p>4 knew that the APA had this clause in their contract.</p> <p>5 I knew how advantageous it was to them. I knew they</p> <p>6 wouldn't give it up easily. But I don't know -- you</p> <p>7 know, what I -- what I -- and the whole point is,</p> <p>8 what I don't know is that what would have come out</p> <p>9 of it had ALPA, you know, adequately represented</p> <p>10 their members. And, you know, he can say all he</p> <p>11 wants that they would never give it up but we really</p> <p>12 don't quite know what's going to happen in</p> <p>13 negotiation. That would be speculation. So I</p> <p>14 basically said I know this. It certainly doesn't</p> <p>15 advantage the TWA pilots, but neither does it make</p> <p>16 it impossible that they would go to arbitration.</p> <p>17 Q Okay.</p> <p>18 <b>MR. TOAL: We'll go off the record.</b></p> <p>19 <b>VIDEO SPECIALIST: The time is 3:01 and</b></p> <p>20 <b>we are going off the video record.</b></p> <p>21 <b>(Brief recess.)</b></p> <p>22 <b>VIDEO SPECIALIST: The time is now 3:42</b></p> <p>23 <b>and we are back on the video record.</b></p> <p>24 <b>BY MR. TOAL:</b></p> <p>25 Q Professor Farber, before the break we</p>
<p style="text-align: right;">180</p> <p>1 you own the seniority list? And the answer is, the</p> <p>2 contract is ours by definition, the seniority list</p> <p>3 by definition of our green book that was even</p> <p>4 acknowledged by Mr. Carty. In a meeting with</p> <p>5 Mr. Carty, we had discussions on that, and his</p> <p>6 statement was, the seniority list integration is</p> <p>7 your responsibility, you own it, and American</p> <p>8 Airlines acknowledged that. And then I asked, can</p> <p>9 you conceive of anything that ALPA could have done</p> <p>10 to persuade the APA to agree to binding arbitration</p> <p>11 of the seniority integration, and there is some</p> <p>12 objections, and then on page 47 at line eight, the</p> <p>13 answer is no, I cannot. Do you see that?</p> <p>14 A Yes.</p> <p>15 Q Okay. And so, I take it, you were not</p> <p>16 aware of this testimony when you prepared your</p> <p>17 report; correct?</p> <p>18 A That's correct.</p> <p>19 Q And would this testimony have affected</p> <p>20 your view on the likelihood of arbitration in the</p> <p>21 absence of a negotiated agreement between the APA</p> <p>22 and the TWA MEC?</p> <p>23 A No.</p> <p>24 Q Would this testimony have had any</p> <p>25 bearing at all on your view of that likelihood?</p>	<p style="text-align: right;">182</p> <p>1 looked at some testimony from the president of the</p> <p>2 APA regarding the APA's willingness to engage in the</p> <p>3 arbitration of seniority integration. Do you</p> <p>4 remember looking at that testimony?</p> <p>5 A Yes.</p> <p>6 Q I believe you said the testimony would</p> <p>7 not affect your analysis in any way; correct?</p> <p>8 A Yes.</p> <p>9 Q And did you say that because you</p> <p>10 disbelieved Mr. Darrah's testimony about whether the</p> <p>11 APA would agree to seniority -- arbitration of</p> <p>12 seniority integration?</p> <p>13 A No.</p> <p>14 Q Why did you testify that it would have</p> <p>15 no impact on your analysis?</p> <p>16 <b>MR. PRESS: Objection. It's been asked</b></p> <p>17 <b>and answered.</b></p> <p>18 <b>THE WITNESS: I -- it's -- it's not</b></p> <p>19 <b>that -- I don't believe he lied. I believe he said</b></p> <p>20 <b>what he sincerely believed. But he is also</b></p> <p>21 <b>testifying in a particular reality x-post, after</b></p> <p>22 <b>ALPA has waived the right to arbitration, the TWA</b></p> <p>23 <b>rights to arbitration, and I'm not sure -- I think</b></p> <p>24 <b>it's very difficult for him or anyone to say what</b></p> <p>25 <b>would have happened in an alternative -- down an</b></p>

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<p style="text-align: right;">183</p> <p>1 <b>alternative path. So that while he sincerely</b>  2 <b>believes they would never agree to arbitration, but</b>  3 <b>the first rule of negotiation is never say never,</b>  4 <b>you know, so --</b>  5 <b>BY MR. TOAL:</b>  6 <b>Q</b> Okay. Let me show you the testimony of  7 Jeff Brundage. Do you know who that is?  8 <b>A</b> No.  9 <b>Q</b> Okay. Mr. Brundage was the head of  10 labor relations for TWA at the time of the American  11 transactions.  12 <b>MR. PRESS: No, he wasn't.</b>  13 <b>(Farber-8 Testimony of Jeff Brundage</b>  14 <b>marked for identification.)</b>  15 <b>BY MR. TOAL:</b>  16 <b>Q</b> I'll mark this document as Farber  17 Exhibit-8.  18 Is this testimony that you reviewed prior to  19 preparing your report?  20 <b>A</b> No. I don't recall ever seeing this.  21 <b>Q</b> Okay. Let me direct your attention --  22 <b>A</b> Not recalling it and never seeing it  23 might be two different things, but I don't recall  24 it.  25 <b>Q</b> Let me direct your attention to page 25</p>	<p style="text-align: right;">185</p> <p>1 These are reconstructions x-post of what would have  2 happened in a hypothetical situation that didn't  3 occur, and I don't -- I think it is very hard for  4 anyone to predict that. And, frankly, I'm not in a  5 position, you know, my position is not that they  6 would have necessarily had arbitration. I'm simply  7 saying that the merged seniority list would have  8 looked different. How they got there, I -- I didn't  9 specify.  10 But -- but in any case, your narrow question,  11 no, it didn't affect -- it didn't affect my beliefs,  12 my analysis, and the reason is I'm not sure that  13 statements like this are informative about what  14 would have happened in some hypothetical situation.  15 <b>Q</b> Do you have any information as to how  16 the APA could have been persuaded to agree to  17 arbitration of seniority integration?  18 <b>A</b> No.  19 <b>Q</b> And are you aware of any leverage that  20 any party had to persuade the APA to agree to  21 arbitration of seniority integration?  22 <b>A</b> No.  23 <b>Q</b> Do you know what the view of the  24 American Airlines pilots was with regard to the  25 proposed acquisition of TWA assets?</p>
<p style="text-align: right;">184</p> <p>1 of this transcript.  2 Do you see at line 16 on page 25 I asked, do  3 you have an understanding of what APA's position was  4 on the prospect of arbitrating seniority  5 integration? And the answer says, they made it very  6 clear to us in all of our discussions, there is no  7 circumstance under which they would entertain the  8 idea of an arbitration. And the question is, who  9 from the APA made that clear to you? And the answer  10 is, Captain Darrah and Captain White, being the  11 primary two contacts that we would have dealt with  12 during that period of time. But the board of  13 directors, the entire association, was solidly  14 behind that position. Do you see that testimony?  15 <b>A</b> Yes.  16 <b>Q</b> Were you aware of that testimony at the  17 time you prepared your report?  18 <b>A</b> No.  19 <b>Q</b> Does that have any bearing on your view  20 about the likelihood of the arbitration in the event  21 that the TWA MEC and the APA were unable to reach a  22 negotiated agreement of seniority integration?  23 <b>A</b> No.  24 <b>Q</b> Why not?  25 <b>A</b> For the same reason I said before.</p>	<p style="text-align: right;">186</p> <p>1 <b>MR. PRESS: All 11,000? I object to</b>  2 <b>the form of the question.</b>  3 <b>THE WITNESS: No.</b>  4 <b>BY MR. TOAL:</b>  5 <b>Q</b> Do you know whether a substantial  6 number of American Airlines pilots preferred that  7 the transaction not go through?  8 <b>A</b> No.  9 <b>Q</b> Is that something that you would have  10 expected to affect the negotiating position of the  11 APA?  12 <b>A</b> I can't answer that question.  13 <b>Q</b> Why not?  14 <b>A</b> Without -- without knowing the reasons  15 why the American Airline pilots might be opposed to  16 the transaction, I don't know.  17 <b>Q</b> Would you agree that's something that  18 had the potential to affect the APA's bargaining  19 position?  20 <b>A</b> Yes.  21 <b>Q</b> Do you have any information about what  22 American Airlines was prepared to do in the event  23 that the TWA pilots were unwilling to agree to waive  24 the arbitration provisions in its collective  25 bargaining agreement?</p>

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<p style="text-align: right;">187</p> <p>1 A I believe they said they would not 2 complete the transaction. 3 Q And where have you seen that? 4 A I don't remember. 5 Q And do you have any views about -- have 6 you done any analysis concerning what American 7 Airlines would have done in the event that TWA 8 pilots refused to waive the arbitration provision? 9 A No. 10 Q Do you doubt any statements by American 11 Airlines that it would have walked away from the 12 transaction? 13 A Again, I can't know one way or the 14 other whether that was a bargaining ploy or simply 15 -- or a statement of what they would do. I just 16 don't know. 17 Q You are not expressing an opinion on 18 that issue? 19 A Exactly. That's correct. 20 Q Do you know who Don Carty is? 21 A The name sounds familiar, but I can't 22 place it right now. 23 Q Are you familiar with American 24 Airlines' experience in the acquisition of Reno Air? 25 A No.</p>	<p style="text-align: right;">189</p> <p>1 page 25 of this transcript. 2 A Page 25? 3 Q Yeah. 4 A Sorry. Okay. 5 Q Okay. So the bottom of page 25, there 6 is a question that reads, now, what was -- what was 7 American Airlines planning to do if TWA was unable 8 to secure from its pilots, amendment of the 9 collective bargaining agreements concerning scope 10 and successorship. Do you see that? 11 A Yes. 12 Q Okay. Do you understand the reference 13 to scope and successorship to be encompassing the 14 provision regarding arbitration of seniority 15 integration? 16 A Yes. 17 Q Okay. And then there is an objection, 18 and then the answer is, well, our intent was to 19 abandon the transaction. And then the question is, 20 and why -- why would American Airlines have been 21 willing to abandon the transaction had those 22 provisions not been waived? And the answer is, 23 well, because this transaction met a strategic need, 24 but it wasn't necessarily the only way for us to 25 respond strategically to what was going on in the</p>
<p style="text-align: right;">188</p> <p>1 Q Do you know what American Airlines did 2 to the Reno Air pilots in terms of their placement 3 on the seniority integration list? 4 A I don't recall. I don't know that I 5 ever -- I'm not sure. As -- as I sit here without 6 any -- any documents in front of me, I -- I couldn't 7 tell you. 8 (Farber-9 Deposition transcript of 9 Don Carty marked for identification.) 10 BY MR. TOAL: 11 Q I marked as Farber Exhibit-9, a copy of 12 the deposition transcript of Don Carty. 13 Let me know if you have seen this document 14 previously. 15 A I have not. 16 Q Okay. And if I told you that Don Carty 17 was the chairman of American Airlines at the time of 18 the transaction involving TWA, would that be 19 consistent with your knowledge and recollection? 20 A I have -- that's -- I have no argument 21 with that. I -- 22 Q But that's not something that you know 23 to be the case? 24 A No. I don't know that to be the case. 25 Q Okay. Let me direct your attention to</p>	<p style="text-align: right;">190</p> <p>1 market. And as I said to you earlier, we were -- we 2 were concerned about the size, and the scope, and 3 the magnitude of this acquisition, and how much risk 4 we added to our company in doing such an 5 acquisition. We had determined that we were not 6 going to add a labor risk, particularly in light of 7 our most recent history to the transaction. Do you 8 see that testimony? 9 A Yes. 10 Q Had you read this testimony prior to 11 preparation of your report, would it have had any 12 bearing upon your analysis? 13 A No. 14 Q Why not? 15 A Because, again, this is an x-post 16 statement of what he would have done in a -- in a 17 hypothetical situation. It -- it -- what he is 18 saying is it doesn't appear to him that the 19 transaction would be as favorable, but -- and he 20 says he wouldn't have abandoned it. I don't know 21 that he would have. And, again, my analysis doesn't 22 depend on arbitration in the sense that -- that TWA 23 and American pilots would have definitely gone to 24 arbitration. 25 Q Well, is your analysis influenced by</p>

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